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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 201.

EDWARD J. CANTRELL AND HENRY B. PETTY, TRADING AS CANTRELL AND PETTY, APPELLANTS,

vs.

WASHINGTON WALLICK.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

FILED MARCH 9, 1883.

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INDEX.

	Original.	Print.
Caption	1	1
Bill of complaint	2	1
Answer	7	4
Replication	11	6
Amendment to answer	13	7
Evidence for complainant	16	9
Testimony of John L. Kite	17	9
Alfred D. Fox	35	22
Geo. M. Ball	39	24
Bob't Warren	41	26
Thomas O. Ladd	50	32
Edward J. Dickinson	53	34
Charles Tollner, Jr	60	39
Wm. Bayley	65	43
"Exhibit A"—Specification forming part of Letters Patent No. 163,825, granted W. Wallick, May 25, 1875	69	45
Evidence for defendants	73	47
Testimony of Washington Wallick	74	48
Frederick W. Werner	95	60
John Grimm Hoyer	110	68

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	Original.	Print.
Agreement as to testimony of J. W. Campbell	122	75
R. F. Cartwright	123	76
Exhibit Z—Diagram	124	76
P—Letters Patent No. 8448, granted Rob't Marcher, Oct. 21, 1851	127	77
Q—Reissue Letters Patent No. 674, granted Rob't Marcher, March 15, 1859	131	80
R—Letters Patent No. 24,879, granted Rob't Marcher, July 26, 1859	136	83
S—Reissue Letters Patent No. 940, granted Rob't Marcher, April 3, 1860	141	86
Argument and submission	148	91
Opinion	148	91
Decree	151	92
Agreement as to decree	154	93
Agreed decree	155	93
Prayer for appeal	158	94
Order allowing appeal	160	94
Bond	161	95
Citation and service	163	96
Clerk's certificate	164	96

1 In the Circuit Court of the United States in and for the Eastern District of Pennsylvania, in the Third Circuit. April Session, 1879.

WASHINGTON WALLICK
vs.
EDWARD J. CANTRELL and HENRY B. PETTY, trading as Cantrell and Petty. } No. 39.

Pleas and proceedings before the honorable the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit of April session, 1879. No. 39.

It is thus contained:

Be it remembered that heretofore, to wit, on the 13th day of May, A. D. 1879, the complainant, by his solicitor, Charles Howson, Esq., comes into our said court here and files his bill of complaint against Edward J. Cantrell and Henry B. Petty, trading as Cantrell and Petty, which said bill, being read, is as follows, to wit:

2 Circuit Court of the United States, Eastern District of Pennsylvania. In Equity.

WASHINGTON WALLICK
vs.
EDWARD J. CANTRELL and HENRY B. PETTY, trading as Cantrell and Petty.

To the honorable the judges of the circuit court of the United States in and for the eastern district of Pennsylvania:

Washington Wallick, residing in the city of Philadelphia, State of Pennsylvania, and a citizen of said State of Pennsylvania, brings this bill of complaint against Edward J. Cantrell and Henry B. Petty, both residing in the said city of Philadelphia and citizens of said State of Pennsylvania, and trading together in said city of Philadelphia as Cantrell and Petty; and thereupon your orator complains and says that he was, on and prior to the twenty-fifth day of May, A. D. 1875, the true, original, and first inventor of a certain new and useful improvement in apparatus for enamelling mouldings, not known or used before his invention thereof, and not for more than two years before his application for a patent therefor in public use or on sale.

And your orator further shows unto your honors that your orator so being the inventor of said improvement, and being a citizen of the United States aforesaid, made application to the proper department of the Government of the United States for letters patent, in accordance with the then existing laws of Congress, and having duly complied in all respects with the conditions and requisitions of said laws, on the twenty-fifth day of May, A. D. 1875, letters patent
3 of the United States, number 163,825, signed and sealed and executed in due form of law for his said invention, were issued and delivered to your orator, whereby there was secured to your orator, his heirs or assigns, for the term of seventeen years from the

said twenty-fifth day of May, A. D. 1875, the exclusive right to make, use, and vend the said invention throughout the United States and the Territories thereof.

And your orator further shows that a description or specification of the aforesaid improvement was given in the schedule annexed to the aforesaid letters patent, accompanied by certain drawings referred to in said last-mentioned schedule, and forming a part of said letters patent; that the said letters patent and the said specification thereto annexed (which, or an exemplified copy of which, your orator will produce as your honors may direct) were duly recorded in the Patent Office.

And your orator further shows that he has applied the said improvement to practical use, and has been, and but for the infringement hereinafter complained of, and others, would still be, in undisturbed possession, use, and enjoyment of the exclusive privileges secured by the said letters patent, and in receipt of the profits of the same.

And your orator further shows unto your honors, as he is informed and believes, that the said defendants herein named, well knowing all the facts hereinabove set forth, are now using apparatus for enamelling mouldings substatially the same in construction and operation as in the said letters patent mentioned, the exclusive right and privilege to make and use which, and vend the same to others to be used, is thus by law vested in your orator.

And so it is, may it please your honors, that the said defendants, as your orator is informed and believes, without the license of your orator, against his will and in violation of his rights, have made and used, and intend to continue still to make and use, the said improvement within the eastern district of Pennsylvania, and refuse to pay to your orator any of the profits which they have made by such unlawful manufacture and use, or to desist from the further infringement of said letters patent, all of which acts and doings are in violation of the exclusive rights and privileges so as aforesaid vested in your orator, under and by virtue of the said letters patent, and are contrary to equity and good conscience, and tend to the manifest injury of your orator in the premises.

4

To the end, therefore, that the defendants may, if they can, show why your orator should not have the relief hereby prayed, and that they may make a full disclosure and discovery of the said matters and upon their several corporal oaths, and according to the best and utmost of their and each of their knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to the matters and things hereinabove stated and charged as fully and particularly as if the same were hereby repeated, and they especially interrogated as to each and every of said matters, and more especially may answer, discover, and set forth, whether during any and what period of time, and whether within the said eastern district of Pennsylvania, or elsewhere, they have, or either of them has, made and used, or caused to be made and used, any, and if so, how many, apparatus for enamelling mouldings, according to, having, and containg the said patented improvement, or any, and if so, what sub-

stantial and material parts thereof, and how the same differed from the said patented improvement.

And your orator prays that the said defendants may be decreed to account for and pay over the income or profits thus unlawfully derived, or which might have been derived from the violation of the rights of your orator as aforesaid, and in addition thereto the damages sustained by your orator by reason of such violation and infringement, and that your honors may increase the actual damages assessed to a sum equal to three times the amount of such assessment under the circumstances of the wilful and unjust infringement committed by said defendants as hereinabove set forth; and further, that the said defendants may be restrained, together with their servants and agents, by an injunction to be issued by this honorable
5 court, or by one of your honors, according to law in such case provided, from making, using, or vending any apparatus for enamelling mouldings embodying and containing the said patented improvement or any substantial or material part thereof, and that the infringing apparatus now in possession or use of said defendants may be destroyed, or delivered up to your orator for that purpose, and for such other relief in the premises as the nature of the case may require, or to your honors may seem meet.

May it please your honors to grant to your orator a writ of subpœna issuing out of and under the seal of this honorable court, directed to the said defendants (Edward J. Cantrell and Henry B. Petty), commanding them to appear and make answer to this bill of complaint, and to perform and abide by such order and decree herein as to this court may seem meet. And may it please your honors to grant to your orator a writ of injunction, conformable to the prayer of this bill, and also a preliminary or provisional injunction issuing out of and under the seal of this honorable court, enjoining and restraining the defendants, to the same purport, tenor, and effect as hereinbefore prayed for in regard to perpetual injunction.

WASHINGTON WALLICK.

CHARLES HOWSON,
Complainant's Solicitor.

UNITED STATES OF AMERICA, }
Eastern District of Pennsylvania, } *ss:*

On the thirteenth day of May, A. D. 1879, before the subscriber came Washington Wallick, the complainant in the foregoing bill named, who, being duly sworn, says: That so far as the statements therein contained are within his own knowledge they are true, and so far as derived from the information of others he verily believes them to be true.

And he further says that he verily believes himself to be
6 the true, original, and first inventor of the improvement in apparatus for enamelling mouldings, described in the letters patent mentioned in the foregoing bill. And deponent verily believes that his title as set forth in said bill is true.

WASHINGTON WALLICK.

Sworn to and subscribed before me, this thirteenth day of May, A. D. 1879.

HARRY SMITH,
Notary Public.

(Endorsed:) C. C. U. S., E. dist. of Penna. No. 39. April sess., 1879. Wallack *vs.* Cantrell *et al.* Bill of complaint. Issue subpœna *sec reg.* Filed May 13, 1879. C. Hawson, for plaintiff.

7 And afterwards, to wit, on the 28th day of June, A. D. 1879, the defendants, by their solicitor, John Walker Shortlidge, Esq., come into our said court here and file their answer to the complainant's bill of complaint, which said answer being read is as follows, to wit:

United States Circuit Court, Eastern District of Pennsylvania.
April Sessions, 1879. In Equity.

WASHINGTON WALLICK
vs.
EDWARD J. CANTRELL and HENRY B. PETTY, trading as Cantrell & Petty. } No. 39.

The answer of Edward J. Cantrell and Henry B. Petty, trading as Cantrell & Petty, in the city and county of Philadelphia, to the bill of complaint of Washington Wallick.

The defendants, saving and reserving to themselves all manner of benefit and advantage of exception which can or may be had or taken to the said complainant's bill of complaint, for answer thereto, or so much thereof as these respondents are advised is in anywise material or necessary for them to make answer unto, jointly and severally answer and say:

The allegations set forth in the first part of said complainant's bill are, so far as these defendants know, substantially true; that is to say, that the relations of the parties, plaintiff and defendants, are as represented; that the said complainant invented what he calls an improvement in apparatus for enameling mouldings, and that he obtained from the proper department of the Government of the United States letters patent therefor, number 163,825, on the 25th day of May, A. D. 1875; that his specifications and claim were duly filed in the Patent Office, and that he applied his apparatus to practical use, as he alleges.

8 To the part of complainant's bill charging these defendants with infringing upon the rights and privileges secured to him by his said letters patent, and with using apparatus substantially the same in construction and operation as in the said letters patent mentioned, these defendants jointly and severally say that they are not using apparatus either substantially the same or having any similarity whatever to the subject of his claim as set forth in his specification, and upon which he obtained his patent aforesaid.

To that part of complainant's bill which alleges that these defendants, without complainant's license and against his will, have made

and used, and intend to make and use, his so-called improvement within the eastern district of Pennsylvania, these respondents jointly and severally deny that they have either made or used his alleged improvement at any time or at any place, but, for a plea that they would have the right and license to use complainant's apparatus if it was suitable for their business, set forth the following matter:

That the said complainant was at one time, to wit, 1875, one of the firm of Wallick, Johnson & Company, of the city and county of Philadelphia; that subsequently the said complainant withdrew from the firm aforesaid, and these defendants were informed and believe and expect to be able to prove, if necessary, that in consideration of the assumption of the liabilities of the said firm by the remaining partners, after complainant's withdrawal, the said complainant relinquished all claim to the assets of said firm of Wallick, Johnson & Company, which property thereby became vested in the remaining members, to wit, Johnson & Company, and among which property was one machine, connected with which was the improved apparatus upon which said complainant claims his patent. That afterwards, to wit, in 1877, the said firm of Johnson & Company, becoming embarrassed, made an
9 assignment for the benefit of creditors, and at a public sale, conducted by M. Thomas & Sons for the trustee of said firm, these defendants purchased the machine and apparatus aforesaid. But finding the improved apparatus of the said complainant unfit for the class of work that these defendants' business required, they threw the said apparatus aside as practically worthless, and provided themselves, at great trouble, expense, and outlay of money, with other improved machinery and process or contrivance entirely different in construction and operation from said complainant's improved apparatus, and adequate to the purpose and requirements of these respondents. And these defendants submit to this honorable court that all and every of the matter in the said complainant's bill mentioned and complained of are matters and claims for compensation which may be tried and determined at law, and with respect to which the said complainant is not entitled to any relief in a court of equity; and these defendants pray they may have the same benefit of this and other defenses as if they had demurred to said complainant's bill.

And these defendants further aver, jointly and severally, to the best of their knowledge, information, and belief, that the said complainant uses the Robert Marcher box, for which a patent issued about twenty-five years ago, and renewals of which patent expired in 1874. The improvement claimed by complainant in his specification consists in a slot or bar, to the sides of which plates are affixed in such a manner as to fill or cover the rabbit or groove of the moulding, and extend perpendicularly above the moulding, so as to form a partition, and which these respondents do not use in any shape or form whatever. The feed of these defendants' machine is so constructed that the same machinery can be used for any moulding of dimensions within four inches, and these defendants are informed and believe that the feed of said complainant's ma-

10 chine and apparatus is not adjustable for different sizes of moulding, but distinct and different parts must be used to adapt it to different sizes. And these defendants jointly and severally deny all and all manner of unlawful acts wherewith they are charged in said complainant's bill, material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, and avoided, traversed, or denied, all of which matters and things these defendants are willing to aver, maintain, and prove as this honorable court shall direct. And they hereby pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

EDWARD J. CANTRELL.
HENRY B PETTY.

JOHN WALKER SHORTLIDGE,
Sol. for Respondents.

Edward J. Cantrell and Henry B. Petty, being duly sworn according to law, jointly and severally, depose and say: That they are the defendants named in the bill of complaint of Washington Wallick, to which this is their answer; and that the statements hereinbefore set forth are true as far as they are within their own knowledge, and that they are true to the best of their knowledge, information, and belief.

Sworn and subscribed to before me the 27th day of June, A. D. 1879.

[L. s.] JOHN W. GERDEMAN,
Notary Public.

(Endorsed:) Circuit court of the United States, eastern district of Pennsylvania. No. 39. April sess., 1879. Washington Wallick *vs.* Cantrell *et al.* Answer to bill in equity. Filed June 28, 1879. Shortlidge, for defendants.

11 And afterwards, to wit, on the 23rd day of July, A. D. 1879, the complainant, by his solicitor, Charles Howson, Esq., comes into our said court here and files his replication to the answer of the respondents, which being read is as follows, to wit:

The Replication of Washington Wallick, Complainant, to the Answer of Cantrell and Petty, Defendants.

United States Circuit Court, Eastern District of Pennsylvania. In Equity.

WALLICK *vs.* CANTRELL and PETTY.

This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto say that he will aver and prove his said bill to be true, certain, sufficient in the law to be answered unto; and that the said answer of the said defendants is uncertain, untrue,

and insufficient to be replied unto by this repliant, without
12 this that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

CHARLES HOWSON,
Compl't's Sol'r.

(Endorsed:) C. C. U. S., E. D. of Pa. No. 39. April sess., 1879. Wallick *vs.* Cantrell and Petty. In equity. Replication. Filed July 23, 1879. C. Howson, for complainant.

13 And afterwards, to wit, on the 8th day of April, A. D. 1880, the respondents, by their solicitor, John Walker Shortlidge, Esq., come into our said court and file an amendment to their answer by agreement; which said amendment, being read, is as follows, to wit:

United States Circuit Court, Eastern District of Pennsylvania. April Sessions, 1879. In Equity.

WASHINGTON WALLICK
vs.
EDWARD J. CANTRELL and HENRY B. PETTY, trading as Cantrell & Petty. } No. 39.

It is agreed that this amendment shall be filed as if filed by leave of court, and that no further replication be necessary.

CHARLES HOWSON, ESQ.,
For Complainants.
JOHN WALKER SHORTLIDGE, ESQ.,
For Respondents.

Filed April 8th, 1880.

And now, to wit, the eighth day of April, A. D. 1880, the defendants come and pray leave to amend their answer in the above matter *nunc pro tunc*, as of the date of filing the same, as follows:

By striking out the words "and that he applied his apparatus to practical use as he alleges," at the end of the second paragraph, and inserting the following:

14 1. That the said respondents, upon information and belief, deny that before the 25th day of May, 1875, the complainant was the original and first inventor of his pretended improvement in enameling mouldings, as alleged in his bill of complaint, and for which he obtained letters patent, No. 163,825, on the 25th day of May, 1875. On the contrary, they, the said defendants, aver, upon information and belief, that the pretended invention, or the substantial and material parts thereof, were, prior to the alleged discovery thereof by the said complainant, well known and long practiced by the persons hereinafter mentioned, who had a knowledge of the

same, and made such prior use thereof at the places set opposite their respective names, and where they now reside:

Marcher Manufacturing Company, New York city.
Frederick W. Werner, Brooklyn and New York city.
Fred. W. Werner, Williamsburg and Hempstead, L. I.
T. C. Ladd & Co., Brooklyn and Williambsburg, N. Y.
J. C. Devine & Bro., New York city.
Denham & Company, Boston, Mass.
R. Gildersleeve, Hempstead, Long Island.
E. A. Galindo, Motthaven, New York.
A. Ceppie & Co., Boston, Mass.
E. Pell, Baltimore, Md.
Valentine & Fox, New York city.
Campbell & Ferguson, New York city.
E. H. Sigler, New York City.
S. Saulnier, Hoboken, New Jersey.
John McCabe, Boston, Mass.
James W. Campbell, New York city..

2. That although letters patent No. 163,825 were granted on the 25th day of May, 1875, by the United States to the said complainant for an improvement in enameling mouldings, as alleged in the bill of complaint, the respondents aver that they are advised and believe that there can be no novel and patentable improvement in enameling mouldings as in substance claimed and described in the letters patent aforesaid, inasmuch as each separate and distinct thing therein claimed and described, and the combination therein claimed, have been well known and in public use by the persons hereinbefore named long prior to the grant of the letters patent aforesaid.

3. And the said defendants, further answering, upon their information and belief aver that the specification and drawings annexed to and making part of the said letters patent, No. 163,825, are altogether defective, inasmuch as they do not contain in exact terms such a full and clear description of the supposed invention as to distinguish the same from all other things known before, and so as to enable any person skilled in the art of which said improvement is a branch, or with which it is connected, to make and use the same, and that, for the purpose of deceiving the public, the specification and description filed in the Patent Office by the said complainant is too broad, and contains more than is necessary to produce the desired effect.

4. And that the said defendants, further answering, upon their information and belief deny that the complainant has put the alleged invention to practical use, and that the exclusive rights secured by the said letters patent have been generally respected, as alleged in the said bill of complaint.

JOHN WALKER SHORTLIDGE,
Sol. for Cantrell & Petty.

(Endorsed:) United States circuit court, eastern district of Penna. In equity. Wallick *vs.* Cantrell. Amendment to answer in the

above matter. Filed April 8, 1880. John Walker Shortlidge, solicitor for def't.

16 In the Circuit Court of the United States in and for the Eastern District of Pennsylvania, in the Third Circuit. April Session, 1879. In Equity.

WASHINGTON WALLICK
vs.
EDWARD J. CANTRELL and HENRY B. PETTY, trading as Cantrell & Petty. } No. 33.

Testimony on behalf of complainant taken before Samuel Bell, Esq., United States commissioner, at his office, No. 435 Library street, in the city of Philadelphia, State of Pennsylvania, on the seventh day of April, A. D. 1880, and on subsequent days by adjournment.

Present: Hubert Howson, Esq., for complainant.

Adjourned till Thursday, April 8, 1880, at 10 o'clock a. m.

17 THURSDAY, *April* 8, 1880.

Met pursuant to adjournment.

Present: Hubert Howson, Esq., for complainant, J. W. Shortlidge for respondents.

It is agreed that the opening proofs for complainant in this cause be taken before Samuel Bell, Esq., with the same force and effect as though he had been appointed special examiner therein by the court.

CHARLES HOWSON,
Complainant's Solicitor.
CANTRELL & PETTY,
By JOHN WALKER SHORTLIDGE,
Solicitor.

Complainant offers in evidence certified copy of letters patent No. 163,825, granted to Washington Wallick, dated May 25, 1875, and marked "Complainant's Exhibit A."

Complainant offers in evidence also model, which it is agreed by the parties hereto is a substantially correct representation of the machine or device described in letters patent and marked "Complainant's Exhibit B."

Complainant offers in evidence a model, which defendants admit to be a substantially correct representation of an apparatus for enamelling mouldings used by them, in the city of Philadelphia, Pennsylvania, between December, 1878, and the bringing of the bill of complaint in this cause, and marked "Complainant's Exhibit C."

Adjourned till Wednesday, April 21, 1880, at 2'clock p. m.

WEDNESDAY, *April* 21, 1880.

Met pursuant to adjournment.

Present: Charles Howson, Esq., for complainant, J. W. Shortlidge for respondents.

JOHN L. KITE, witness produced and affirmed on behalf of complainant.

Question 1. What is your name, age, residence, and occupation?

18 Answer. John L. Kite; I am fifty-one years of age; I reside in Philadelphia; I am a mechanical engineer and expert in patent cases; have had thirty-five years' experience in the construction of machinery and other mechanical devices.

Q. 2. Are you or not an inventor and patentee, and have you or not had experience in the reading of specifications of letters patent, and as an expert witness in reference to mechanical subjects?

A. I am an inventor and patentee, and am familiar with the reading of specifications, and have had frequent occasions to examine letters patent for the purposes of acquiring information in cases which I am called as an expert witness.

Q. 3. Have you or not read the specification of letters patent, "Complainant's Exhibit A," and do you or not understand the invention therein described and shown?

A. I have read the specification, and believe I understand the construction and purposes of the device therein described.

Q. 4. Please examine model, "Complainants Exhibit C," and state wherein you consider an enamelling box constructed in substantial accord with that model to resemble or differ from the thing described and shown in complainant's patent?

A. I see no substantial difference, and it appears to be constructed for the purpose of performing the same work as the complainant's device, and to do it in a precisely similar manner.

Cross-examination by Mr. SHORTLIDGE:

X Q. 1. Mr. Kite, state where you learned your trade, and what it was; and whether or not you have been pursuing that occupation since; and if not, what other pursuit have you been engaged in?

A. I learned my trade of machinist in Cincinnati, Ohio, and have been engaged in the designing and construction of machinery the greater part of the time since 1845, with the exception of fours years serving in the army of the United States and about two years designing and constructing household furniture and ornaments.

19 X Q. 2. When did you learn your trade?

A. I began in 1845, as answered in my last question.

X Q. 3. When did you finish?

A. I finished my apprenticeship in 1849.

X Q. 4. As a machinist?

A. Yes, sir.

X Q. 5. Now, after having finished your trade, what did you do?

A. I worked as a journeyman machinist and draughtsman for four years; then went into the machine business, which I carried on for eight years, being engaged principally in the construction of new and light machinery and patented inventions; then for four years in the army, two years in the furniture business, and various me-

chanical pursuits since that time; I have been occupied most of the time since 1867 in improving and perfecting various patented inventions of other parties, as well as upon inventions of my own.

X Q. 6. During this thirteen years since 1867, what were the principal cases you have been retained in as an expert?

A. I cannot give you names without referring to memoranda, but can mention the inventions if you desire.

X Q. 7. Yes, sir.

A. Mill-stones, car-couplings, engine-governors, hydro-carbon machines.

X Q. 8. What is your knowledge of boxes or devices for enamelling mouldings, and where did you acquire that information?

A. I have no practical knowledge derived from experience in enamelling mouldings, but I believe I clearly understand the nature of the process and the requirements of an apparatus for effecting it.

X Q. 9. Were you retained in this case by the complainant?

A. Yes.

X Q. 10. What was the amount of your retainer fee in this case?

A. My bill is not yet rendered.

20 X Q. 10. Well, Mr. Kite, what do you propose to charge?

A. It will depend upon the time occupied.

X Q. 12. How do you fix your charges, by the hour or day, and how much by the hour or day?

A. I have no regular rate of charges either by the hour or day.

X Q. 13. Who employed you in this case, Mr. Kite?

A. The complainant or the complainant's counsel.

X Q. 14. Is the amount of compensation a contingent arrangement between yourself and complainant's counsel?

A. No, sir.

X Q. 15. Mr. Kite, what was the last case you were employed in as an expert, and when was it?

A. A mill-stone case; the case is not yet settled; I was employed last summer on it.

X Q. 16. How long were you engaged on that case, Mr. Kite?

A. Practically, about a half day.

X Q. 17. Well, Mr. Kite, what was your charge?

A. I really do not recollect, probably about $10.

X Q. 18. Am I to understand from that that your charges are about $20 a day?

A. Not in all cases.

X Q. 19. You have said that you had no practical knowledge of enamelling mouldings derived from experience, but I believe I understand the process and the requirements of an apparatus for effecting it. Be good enough to explain that process, Mr. Kite.

A. A strip of wood or other material near the size and shape required is drawn through a vessel containing the enamelling material, and a scraper or guide or end plate is arranged to permit a proper quantity of the enamel to pass out with the strip to adhere to the strip. Said strip may be drawn through the vessel containing the enamel either by hand or by suitable mechanical means.

X Q. 20. Are you familiar with the patents that have been granted for doing this work?

A. I am not, excepting the complainant's patent.

X Q. 21. Then you are entirely unfamiliar with the state of the art of enamelling mouldings at the time complainant's patent was granted?

A. I believe I understand how it was done before that time.

X Q. 22. Have you explained how it was done prior to that time, meaning the time that complainant's patent was granted?

A. I have already said that I was not practically familiar with the enamelling of mouldings, but that I understood the nature of the process and of the devices used in a general way.

X Q. 23. That is not an answer to my question. Please answer my question.

Question repeated.

A. I did not intend to give more than a general description of the process as I understand it is done at present.

X Q. 24. In response to X Q. 19 did you intend to describe, or did you describe, the complainant's method of enamelling moulding or the methods in common use prior to the use of his device?

A. I meant to describe in a general way the process of enamelling, and my answer to X Q. 19 will apply to both.

X Q. 25. Did you get your knowledge of enamelling mouldings from the description embraced in complainant's specifications?

A. Principally from that, though I had previous knowledge of methods of coating or enamelling wood and other substances in somewhat similar manner.

X Q. 26. Where did you derive your knowledge and information of enamelling wood or other substances in somewhat similar manner?

A. From reading and observation, as there are many operations partaking of the nature of coating wood or other material with plastic or liquid substances.

X Q. 27. What did you read and what did you observe in relation to enamelling mouldings?

A. I cannot cite you the books or particular instances.

X Q. 28. Can you give me one single instance or one single reference to any publication, or one single source aside from complainant's specification, from which you derived any information relating to the art of enamelling mouldings?

A. I think the process will be found described in several of the mechanical dictionaries, but I do not name any one in particular.

Adjourned till Saturday, April 24, 1880, at 1 p. m.

SATURDAY, *April* 24, 1880.

Met pursuant to adjournment.

Present: Counsel as before and John L. Kite, the witness.

X Question 29. Mr. Kite, you have said that you understood complainant's specification; be good enough to say if "Complainant's Exhibit B" is a correct representation of a device claimed

to have been invented by complainant, and described and claimed in said specification?

Answer. I think it is.

X Q. 30. Now, Mr. Kite, do me the favor of explaining the complainant's claim and the model before you marked "Exhibit B."

A. I don't think I can make any clearer explanation than the words of the claim given, if the specification is read in connection with the drawing; I mean I could not put it in fewer words.

X Q. 31. I have not asked you to put it in fewer words; please explain the claim and illustrate it by the model you have before you marked "Exhibit B."

A. The claim is for a box to contain the enamel, a box furnished with ends through which the mouldings pass and a central partition fitting against those parts of the moulding not intended to be enamelled and the model is constructed in the manner described in the claim.

X Q. 32. Explain what part or parts of that model is covered by the complainant's invention.

23 A. The box divided into two parts, the end plates and the slit or opening in the partition all arranged so that a strip of moulding may be fed or drawn through the box and end plates by feed rollers or other means.

X Q. 33. Do you know what part of that box is old and what part is new; that is, what part complainant claims as new?

A. I understand him to claim as new a box divided by a partition and constructed as described, so that mouldings to be enamelled may be made more nearly to the finished size than heretofore, and to lessen the after work of cutting away superfluous wood from the enameled moulding.

X Q. 34. Oblige me by answering my question.

(Question repeated.)

A. I don't think I can answer the question any more clearly.

X Q. 35. Be good enough to try.

A. I don't see how I can answer the two last questions more plainly.

X Q. 36. I understand from that, Mr. Kite, that you do not know what is old or what is new?

(Objected by Mr. Howson as counsel's understanding is immaterial.)

A. I know how mouldings were formerly enamelled, by drawing a box or vessel containing the enamel over the strips to be covered or coated; I understand complainant's arrangement of the parts of his device to be new, though some of the parts, such as sides, ends of box, may be old, as I cannot conceive of a box for holding liquid or plastic substances without said box having sides and ends.

X Q. 37. Are the sides old or new in the box before you?

A. The arrangement of the sides is new, inasmuch as the Marcher box commonly used had loose sides, or was often made of four loose pieces bolted or screwed together.

X Q. 38. Then the difference, as I understand you, between the sides of the box, "Exhibit B," and the Marcher box is that in this the sides are permanent or stationary?

A. That is the chief difference.

24 X Q. 39. Now, please explain and illustrate by this model before you in what respects the ends of the box, 'Exhibit B," differ from the ends of the Marcher box?

A. The end proper, as distinguished from the end plate, is permanent in the model, and in the Marcher box is movable.

X Q. 40. In the Marcher box the end plate has an orifice cut the reverse of the shape of the moulding, as in this, has it not?

A. Yes, sir.

X Q. 41. Then the only difference you have designated is the movability of the end plate of the Marcher box. Can you think of any other differences?

A. That is not the only difference I have designated, as the end plates of complainant's device are movable for the purpose of changing them for different mouldings.

X Q. 42. Go on, then, and state the other differences, and explain the improvement claimed, if there is any, in the end plate of "Exhibit B."

A. The improvement is in the form of the opening in the end plates when used in combination with the slot formed in the partition which divides the box into two parts or two boxes.

X Q. 43. You mean by that answer that the end plate is cut the reverse of the shape of the moulding in all cases, and without reference to the slot in the partition, do you not?

A. I have said in my answer before that a part of this end plate agreed with the slot in the partition.

X Q. 44. Which part?

A. That part which agrees with the part of the moulding not intended to be enamelled, and upon which the feed rollers operate as described.

X Q. 45. The box or machine must be so operated that the feed rollers will not touch the part enamelled. Is that so, Mr. Kite?

A. It is so intended.

25 X Q. 46. Why not run the feed rollers over the enamelled surface?

(Objected to by Mr. Howson as immaterial.)

A. The work would probably be imperfect, as the enamel is used in a semi-liquid condition.

X Q. 47. Then with this box marked "Exhibit B," which you say is a substantial representation of complainant's invention, no perfect enamel can be made upon the moulding where it would be necessary to run the rollers over the enamel surface. Is that so?

(Objected to by Mr. Howson as immaterial and irrelevant.)

A. I did not say so, because a strip could be fed by rollers bearing upon the surface to be enamelled, but the intention of the invention of this patent is stated to be to avoid feeding the strip by the

surfaces to be enamelled, and he describes the proper form for making these strips, so that a greater number of mouldings can be enamelled at one time, and the pressure of the feed rollers upon the surface to be enameled be avoided.

X Q. 48. Do you understand the complainant's specification and invention to be confined to the enamelling of mouldings in which the feed rollers run between the surfaces enamelled?

(Same objection.)

A. The inventor states that to be his main aim in constructing the enamelling box and the strips of the shapes designated.

X Q. 49. Is or is not the partition dividing the box of "Exhibit B" the plaintiff's improvement, as claimed in his specification?

A. It appears to be.

X Q. 50. Is it not substantially the whole of his claim?

A. It is the partition arranged with the other parts as described that is claimed.

X Q. 51. Do you understand this invention to be for a combination or for a new and distinct part of the model before you, or is it both for a combination and for a new and improved part?

26

A. The claim is for an apparatus constructed of parts described, most of which are not new, but the arrangement of which, as described, is new.

X Q. 52. Then you do understand that there is a combination claimed, do you?

A. The word combination is not used in the claim; but the arrangement of the parts is claimed.

X Q. 53. Then am I to understand that no combination is claimed?

A. The arrangement of the parts may be called a combination of said parts, for the purpose set forth.

X Q. 54. Question repeated as to whether the claim is for a combination.

A. The slotted partition appears to be a new feature, and the claim is for the arrangement and construction of the enamelling box, in which this can be used in conjunction with parts previously used in the enamelling, and, therefore, the claim may be said to be for a combination of old and new features.

X Q. 55. Is not the bar or partition the only new feature?

A. The form of the end plates or their openings for the purpose described is new.

X Q. 56. How can a moulding be put through a box, for the purpose of being enamelled, without an opening to fit it?

A. The opening must fit the strips to be enamelled.

X Q. 57. Then if the opening must fit the strips to be enamelled, and as the opening in "Exhibit B" is simply a plate with an opening fitting a particular piece of moulding, in what respect is said opening new, and in what respect does it differ from the end plates heretofore in use?

A. It differs from the previous ones in that a part of its outline corresponds with the slotted partition, and thus in effect one side of

the strip is passed through one box of enamel while the other side of the strip is passing through another box of enamel, as the partition separates the enamel box into two.

27 X Q. 58. You have said that the end plate must necessarily fit the moulding passing through the box in order to be enamelled, in every case. My question was in what respect does the plate in the model differ from those heretofore in use?

A. It has a different function, as I explained in my answer to the last question; but its use as a scraper is the same as the end plate of the Marcher box.

Adjourned till Wednesday, April 28, 1880, at 11 o'clock a. m.

WEDNESDAY, *April* 28, 1880.

Met pursuant to adjournment.

Present: Counsel as before.

Cross-examination of the witness, JOHN L. KITE, resumed by Mr. SHORTLIDGE:

X Question 59. Please examine the model, "Complainant's Exhibit C," and explain it.

Answer. This is a model of the enamelling box, composed of two compartments with end plates, through which the strip to be enamelled passes; the compartments are separated by movable sides which form a partition or division, covering that part of the strip not intended to be enamelled; this partition or division, formed by the two movable sides, has a slot or separation longitudinally fitting at its upper and lower edges to that part of the strip upon which the feed rollers operate, and which part is not designed to be coated; these two compartments are adjustable, so as to constitute, in effect, a movable partition.

X Q. 60. You have said that it is a model of an enamelling box divided into two compartments. Is it not rather two separate and distinct boxes?

A. The whole apparatus I have called an enamelling box, and it is composed of two compartments, which would be separate boxes, but that the parts of the sides of each constituting the partition are really common to both compartments, the slot in this parti-

28 tion when open making one box of the two; therefore I described it as an enamelling box divided into two compartments.

X Q. 61. Will you now answer my question and state whether there are two boxes or not?

(Objected to as already fully answered.)

A. I consider them, as I have stated, two parts of one box, and not two separate boxes.

X Q. 62. Will you be good enough to point out in what way the sides of these two boxes are movable as contradistinguished from adjustable?

A. The inner sides of these two compartments are composed of two parts, a fixed part and a movable part or plate, which plate appears to be adjustable for the purpose of changing the width of the

partition to suit different mouldings, while the upper and lower fixed parts do not appear to be movable.

X Q. 63. Examine these end plates in the model "Exhibit C," and state if they are different from those heretofore in use.

(Objected to as not cross-examination and irrelevant and immaterial.)

A. They differ from previous ones, insomuch as a part of their outline is made to correspond with the space occupied by the slot in the movable partition.

X Q. 64. State whether, in your judgment, the opening cut in an end plate must conform precisely to the shape of the moulding designed to be enamelled, or whether it must be cut to suit what you have termed on several occasions the shape of the slot or partition, and also whether it is possible to enamel a piece of moulding of any shape without having the end plates perforated with an opening that will fit it in size and in shape, without reference to any other part of the box?

(Objections renewed and further objected to as vague and indefinite.)

A. I have endeavored to show that a portion of the opening of these end plates must conform to that portion of the moulding which is not to be enamelled; in general terms, the opening must conform to the shape of the part to be enamelled; but in this apparatus, as I have stated several times, a part of the opening is designed to assist the slot in the partition in preventing certain parts of the moulding from being coated or enamelled.

29

X Q. 65. State whether, in your judgment, the opening cut in an end plate must conform precisely to the shape of the moulding designed to be enamelled.

(Same objections.)

A. In any end plate the part of the opening in the end plate which is designed to regulate the passage of the enamel must conform to that part which is to be enamelled; the other parts of the strip may be protected or prevented from receiving a coat of enamel by other means independently of the end plates, and in such cases the opening need not conform precisely to the strip to be enamelled.

X Q. 66. State what other means can be employed independently of the end plate.

(Objected to as irrelevant.)

A. Parts of the enamelling box may be arranged to fit certain parts of the moulding and prevent the enamel from reaching these parts, such as the partition with its plates in "Complainant's Exhibit B."

X Q. 67. I understand then, from your answer, that the end plate on "Exhibit B" is different from the end plate in "Exhibit C?"

A. They are substantially the same.

X Q. 68. Please explain what would prevent the escape of the enamel, unless the orifice was the shape of the moulding, and filled

by the moulding during the process of enamelling, and how the enamelled surface could acquire the smooth polish necessary.

(Objections renewed.)

A. I have already stated in general terms that the opening must agree with the moulding; but it is evident that in "Complainant's Exhibit B" the partition with its slot could be readily so made that that part of the opening in the end plate corresponding to the
30 part of the strip not to be covered would receive none of the enamel in passing through the box; but I fail to see why the fitting or not fitting of the part of the end plate above designated should have any effect upon the polish of the enamel, as the enamel is not designed to touch it.

X Q. 69. I understand you then, that the parts of the end plate fitting the parts of the moulding that is not to be coated need not be the shape of the moulding. Is that so?

(Objections renewed.)

A. What I mean is that the apparatus, "Complainant's Exhibit B," could be made to work if those parts did not conform to the moulding; but I have repeatedly stated that in general use the end plates do conform to the shape of the moulding.

X Q. 70. Could there be an end plate, fitting a moulding and used for the purpose of enamelling the same, that could not be substantially like the end plate on "Exhibit B?"

(Objections renewed.)

A. Yes, there could; for the end plate in "Exhibit B," while it operates as any other end plate, is made so as to be, in effect, a part of the partition of the enamelling box.

X Q. 71. Same question as to "Complainant's Exhibit C."

(Objected to as above.)

A. The same answer applies to "Exhibit C."

X Q. 72. You have stated that, in your judgment, "Complainant's Exhibit C" represents a device that is substantially the same, in its construction and operation, as the apparatus shown by "Complainant's Exhibit B;" please give your reasons therefor.

A. It appears to be an apparatus composed of substantially similar parts arranged for performing the same operations in the same manner, the only difference being in the method of constructing the box part of the apparatus, which, in "Exhibit B," is divided into two compartments by a partition and plates while in "Exhibit C" the box is divided into two parts by plates, which are adjustable, so as in effect to increase or lessen the width or thickness of the slot in the partition; and the difference in the methods of vary-
31 ing the size of the slot makes no difference in the practical working of the apparatus, for it is evident that the movable and adjustable parts of the sides of "Exhibit C" have no other function than the plates upon the sides of partition in "Exhibit B."

X Q. 73. What do you mean by a slot?

A. The term slot is generally used to signify or designate a long narrow opening of uniform width.

X Q. 74. You have said that in "Exhibit C" the plates are adjustable, so as to lessen or extend the width or thickness of the opening which you call a slot; is the slot or opening in "Exhibit B" so adjustable?

(Objected to as immaterial.)

A. The size of the slot in "Exhibit B" is varied by changing the plates upon the sides of the partition.

X Q. 75. Would it not be necessary to change the bar for different sizes of moulding?

(Same objection.)

A. No, sir.

X Q. 76. Explain, then, how different sizes of moulding are enamelled by an apparatus shown by "Exhibit B."

A. Thicker or thinner plates placed upon the partition will fit any moulding desired.

X Q. 77. Do you mean attached to the sides of the bar?

A. Yes, sir.

X Q. 78. In enamelling different sized mouldings with the apparatus shown in "Exhibit C" is it necessary to make any such change of parts?

(Objected to as immaterial and irrelevant.)

A. No, sir.

X Q. 79. The infringement, then, if any exists, is in the use of the adjustable plates bolted to the sides of "Exhibit C," being substantially the same as the plates attached to the sides of the bar in "Exhibit B?"

(Objected to as incompetent.)

32 A. In my opinion it is not alone in that, for the partition with its plates divides the box into two parts, or enamelling boxes, and the general arrangement of all the parts in each device, which, besides being similar in form, have each the same functions, and the work performed by either apparatus is the same, and performed in the same manner.

X Q. 80. You have said that it was not alone in the plates that you consider that the one is an infringement upon the other. I desire to know if you consider the plates an infringement at all upon the plates attached to the sides of the bar, as the plates attached to the sides of the bar are permanent and not adaptable to various sizes of moulding, whereas the plates bolted to the sides of the boxes shown in "Exhibit C" are, as you have said, adjustable for the purpose of enamelling various sizes of moulding?

(Objected to on former grounds, and also as assuming.)

A. Yes; I consider them equivalents.

X Q. 81. What other parts of the one do you consider the equiv-

alent of the other, aside from what you call the arrangement of the parts in the models "B and C?"

(Objected to as indefinite.)

A. The divided box, aside from the arrangement, any part of one would be the equivalent of the corresponding part of the other; and it is the arrangement of these parts which give them their value.

X Q. 82. If the apparatus shown in "Exhibit C" will perform, in addition to the same work performed by that shown by "Exhibit B," other functions or work not capable of being accomplished by "Exhibit B," would that have any effect upon your judgment that the one is substantially the same as the other?

(Objected to as incompetent.)

A. No, sir.

X Q. 83. Can any moulding be enamelled by complainant's device that is not shaped as to have a groove in the upper part fitting the partition?

(Objected to as not cross-examination, and as irrelevant and incompetent.)

A. Yes, sir.

33 X Q. 84. Explain how.

(Objections continued.)

A. The mouldings might have a projection instead of a depression fitting the corresponding parts of the partition.

X Q. 85. Please examine the drawing which I hand you, marked "R. Marcher Enamelling Machine, No. 8448, patented October 21, 1851," and explain how the plates marked "C C," and bolted to the sides of the box therein shown, substantially differ from the plates bolted to the sides of "Complainant's Exhibit C?"

(Objected to as not cross-examination, and as irrelevant and immaterial.)

A. They differ in the fact that they constitute the continuing sides of the box, while in "Exhibit C" similar plates are part of the separating sides of two divisions.

X Q. 86. Examine the piece of moulding now handed to you, marked "Y," and state if a moulding of that shape could be enamelled by the device shown in "Exhibit B;" and, if so, explain how it could be done.

(Objections continued.)

A. This moulding could be made on a strip of four faces, or on a strip of two faces in the apparatus of the complainant, of which "Exhibit B" is a model.

X Q. 87. Also examine piece of moulding marked "W" and state whether or not, and, if so, how, that could be enamelled by the device shown in "Exhibit B."

(Same objection.)

A. It could be made on a strip of two faces.

X Q. 88. By a strip of two faces I understand you to mean a double moulding cut in two after having been enamelled; am I right?

(Same objections.)

A. That is what I mean.

X Q. 89. And by four faces I understand you to mean a piece of moulding cut in four parts, each making a perfect and finished part; am I correct?

(Same objection.)

A. That is what I mean.

34 X Q. 90. When the apparatus shown in "Exhibit C" is adjusted for the purpose of enamelling a piece of moulding similar to that shown in drawing No. 8448, R. Marcher, October 21, 1851, and marked "E" in said drawing, would it be performing its work in the same manner as the same operation would be accomplished in "Exhibit B?"

(Same objections.)

A. The same way in effect to all intents and purposes.

JOHN L. KITE.

MONDAY, *May* 24, 1880.

Re-examination of Mr. JOHN L. KITE by Mr. HOWSON:

Question 91. Please state fully the meaning of your answer to cross-question No. 90.

Answer. In the answer I assumed that in enamelling a moulding such as E in No 8448, R. Marcher, October 21, 1851, that both "Exhibit C" and "Exhibit B" would be used temporarily as a single box.

JOHN L. KITE.

(Complainant here rests.)

Circuit Court of the United States, Eastern District of Pennsylvania.

WALLICK *vs.* CANTRELL and PETTY.

JULY 14, 1881.

J. W. Shortlidge, Esq., solicitor for defendants.

SIR: Please take notice that on Tuesday, July 19, at 11 a. m., the testimony of A. D. Fox, of New York; George W. Ball and —— Jewell, of Brooklyn; John Titus, of Hempstead, L. I., and other witnesses, in rebuttal on behalf of Washington Wallick, will be taken before W. T. Farnham, No. 59 Liberty street, room 28, New York city.

C. HOWSON,
Complainant's Solicitor.

35 *Rebuttal.*

United States Circuit Court, Eastern District of Pennsylvania. In Equity.

WASHINGTON WALLICK
vs.
EDWARD I. CANTRELL and HENRY B. PETTY.

Depositions taken in rebuttal on behalf of complainant in the above-entitled action, pursuant to notice, before William T. Farnham, Esq., notary public, at his office, No. 59 Liberty street, in the city of New York, on the nineteenth day of July, A. D. 1881.

Present: Hubert Howson, Esq., on behalf of complaint.

It is agreed that the following depositions herein may be taken by and before William T. Farnham, Esq., attorney-at-law and notary public, with the same force and effect as though the said Farnham had been appointed special examiner by order of court:

ALFRED D. FOX, a witness, called on behalf of complainant and duly sworn, testifies as follows:

Question 1. What is your name, age, residence, and occupation?

Answer. Alfred D. Fox; forty years of age; reside at 42 Hudson street, New York; I am in the lumber business.

Q. 2. If you know Frederick W. Werner, manufacturer of enamelled mouldings, now doing business at Hempstead, Long Island, please state when you first became acquainted with him, and the circumstances.

A. I am acquainted with him; I first became acquainted with him, I think, in 1874; he was foreman for T. C. Ladd
36 & Co., manufacturers of mouldings in Williamsburg, Brooklyn, eastern district of New York; I had advanced money to that firm and taken a mortgage on their machinery; they wanted more capital; they could not get credit for lumber, material and wages.

Q. 3. At the time you took this mortgage and advanced this money for the concern, what machinery did they have?

A. They had two moulding machines, circular saws, and one enamelling machine.

Q. 4. What character of moulding was this enamelling machine adapted to enamel?

A. They made half-inch mouldings principally; they called it inside moulding, I think; those were made four half-inch mouldings in width out of a flat strip five-eighths of an inch thick and $2\frac{5}{8}$ of an inch in width, and they were, after they had been enamelled, rabbeted.

Q. 5. Could you make us a sketch of the outline of this moulding as it passed through the enamelling box?

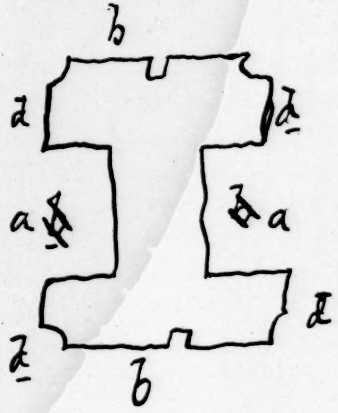
(Witness makes sketch, which is offered in evidence as "Wallick's Exhibit, Fox's Sketch A, July 19, 1881.")

(Witness continues:) The parts marked *a a* indicate the rabbets

FOX's SKETCHES.

SKETCH A

SKETCH B



which were cut after the moulding had been enamelled; the whiting covered the entire upper surface "*b*" "*b*" "*b*" and the sides *d d*.

Q. 5. Please state if you know how this machine came into the possession of T. C. Ladd & Co.

A. That I cannot say of my own knowledge; I understood that they bought it from Werner.

Q. 7. After you became interested in the business in the manner you have stated, what, if any, change was made in the enamelling machine used by the firm, and at whose suggestion?

A. There was no change made in the old machine, but a new enamelling machine was built at the suggestion of Werner, who claimed to be the inventor.

Q. 8. Please state as succinctly as you can the circumstances which led to the building of this new machine to take the place of the old one you have spoken of.

37 A. Werner represented to me that by building this new machine we could make mouldings in a different form and much cheaper, as the labor of rabbeting and cleaning was done away with; and on the strength of this recommendation I had a machine built at Ball & Jewell's machine shop at Greenpoint, L. I. As near as I can recollect I was to pay for one machine for him to have for his own use, and the patent was to be assigned to me, and I was to have the exclusive control of it. He stated that this was a new idea, and that no mouldings were made by this process by any party, and that he was going to get a patent; and it was on the strength of that that I got the machine made.

Q. 9. Please explain what the principal feature of improvement was in the new machine over the old one.

A. The rabbeting was done at the same time the moulding was made, so that a double rabbeted strip of moulding to form four mouldings could be passed through the enamelling box at one time.

Q. 10. Will you please make a sketch of the moulding which could be enamelled on the new machine?

(Witness makes a sketch, which is offered in evidence as Wallick's Exhibit, "Fox's Sketch B," July 19, 1881.)

(Witness continues.)

In this sketch *a a* represent the rabbets formed before enamelling, and *b b* and *d d* represent the enamelled faces of the moulding.

Q. 11. Please state whether or not Werner ever said to you anything as to his having made before such a machine as this new machine you had made by Ball & Jewell.

A. He said there never had been any made.

Q. *11.* What, if anything, impresses this on your recollection?

A. Because that, if anything, induced me to pay for the new machines.

Q. 12. Did you have more than one of these new machines made?

A. There were two made, but only one was used while I had anything to do with it.

Q. 13. About when was it that these two new machines were built?

A. I think it was in 1874 or 1875.

Q. 14. How long did you remain interested in the concern?

A. About a year.

Q. 15. What, if you know, became of the old machine?

A. It was taken out unknown to me by T. C. Ladd; what became of it I don't know; I was informed by the watchman that it was taken out by Mr. Ladd.

Q. 16. Where was the second of the new machines kept?

A. I don't know whether he moved it to the factory or not; I don't know where it was kept; this second machine was the one that was to be for Werner's own use.

Q. 17. What wages, if you know, did Mr. Werner get while foreman of the concern?

A. Twenty-five dollars a week.

Q. 18. Was Werner still foreman for the concern when you withdrew?

A. No; a man by the name of Roberts was.

Q. 19. Do you recollect how long Werner stayed after you became interested?

A. Several months, but how many I don't know.

Q. 20. Was or was not twenty-five dollars a week a somewhat high rate of wages for the work Werner was doing?

A. It was.

Q. 21. Why was this rate paid him?

A. On account of the knowledge of the business he was said to possess.

Q. 22. If you know, were any steps taken to procure a patent on the improvement?

A. I don't know.

Q. 30. What, if you know, became of the new machine used by T. C. Ladd & Co.?

A. T. C. Ladd & Co. never used the machine; the mortgage was foreclosed, and they were out of the concern before the ma-
39 chine was built; I put a man in by the name of Robert Warren to run the concern, and as he did not run it satisfactorily after some time I dropped the whole concern; and what became of the machine I don't know.

Q. 24. About how long after you first advanced the money was it that the mortgage was foreclosed?

A. I think about six months; I was in Canada at the time.

ALFRED D. FOX.

GEORGE M. BALL, a witness, called and duly sworn herein on the part of complainant, testifies as follows:

Question 1. What is your name, age, residence, and occupation?

Answer. George M. Ball; forty-three years of age; I reside at Greenpoint, Long Island; I am a machinist.

Q. 2. If you know Frederick W. Werner, manufacturer of mouldings, now doing business at Hempstead, Long Island, please state

when you first became acquainted with him, and the circumstances leading to it.

A. I do know Frederick W. Werner; I first became acquainted with him some time in the early part of 1875; at that time he was foreman for Mr. Fox, and we became acquainted with him at the time these machines were ordered; the machines I refer to were two enamelling machines for enamelling mouldings ordered of our firm by Mr. Fox; the drawings from which we made these machines were gotten up by Mr. Werner as I understood; we made the patterns from castings, and fitted up the machines; the drawings were brought to us by Mr. Fox when he gave the order for the machines; Mr. Fox was proprietor of the moulding factory in which Mr. Werner was employed at that time.

Q. 3. Please state, if you recollect, the character of these drawings, on what kind of paper they were made, and whether they appeared to be old or new drawings.

A. These drawings were simple working drawings, made on brown drawing paper, and apparently new; I think the drawings had never been used before.

40 Q. 4. Were they torn or soiled in any way, if you recollect?

A. I do not recollect that they were injured in any way.

Q. 5. Had you any difficulty at all in making out the lines of the drawings?

A. None, I believe.

Q. 6. What became of those drawings?

A. I do not now recollect; they were taken away from us, but I do not recollect who took them.

Q. 7. What became of the machines that you made?

A. They were delivered to Mr. Fox, and we looked to him for the payment for them; they subsequently came into our hands on storage, and in 1876, I think, we sold them to a man by the name of Symmes, and under his direction and at his request shipped them to F. W. Werner at Hempstead, L. I.

Q. 8. Before making these two machines for Mr. Fox did you make any machine for enamelling mouldings?

A. No; we never did.

Q. 9. Did you ever make any enamelling machines for Mr. Werner before or since that time?

A. Since that time we made part of one machine; I should guess that was in 1877.

Q. 10. From your recollection of the drawings which Mr. Fox brought you did their condition indicate that they had ever been used before in the making of patterns or fitting machines from them?

A. There was no indication that they had ever been used before to build machines from; my impression was they had been made especially for the purpose of making these two machines that we built.

Q. 11. What part of the machine do you refer to in your answer to question 9?

A. To the castings of the machine.

Q. 12. Do you or not recollect what became of the patterns of that machine?

A. My impression is that Mr. Werner took them away with him at the time we furnished the castings; I think the drawings were taken at the same time by him.

41 Q. 13. Did you ship these castings to him or did he take them?

A. I think he took them away himself; he was in business in Hempstead at that time.

Q. 14. Do you know whether or not these castings were used in the fitting up of another such enamelling machine?

A. I do not know about that; we presumed that was what they were made for; I think we gave him a figure for what we would finish them for, and he said he could get the machine fitted up for less elsewhere.

Q. 15. Had you ever seen any enamelling machine like those you built for Mr. Fox before he gave you the order?

A. We never had.

Q. 16. Whom do you refer to by "we" in your answers?

A. The firm of Ball & Jewell, machinists; we have been in business together about fifteen years.

Q. 17. If you recollect, was anything said to you by Mr. Fox in ordering these machines as to whether they were a new improvement or a new idea?

A. Yes; he said the idea was new; that it belonged to Mr. Werner, and that he either had got or intended to get a patent on them.

Q. 18. Was anything said to you by Mr. Fox as to whether both machines were for himself or not?

A. Nothing was said that I recollect in regard to that.

GEORGE M. BALL.

NEW YORK, *September* 23, 1881.

Met pursuant to notice, and the further examination of witnesses herein continued as follows:

(Present Hubert Howson, Esq., on the part of complainant, and J. W. Shortlidge, Esq., on behalf — defendants.)

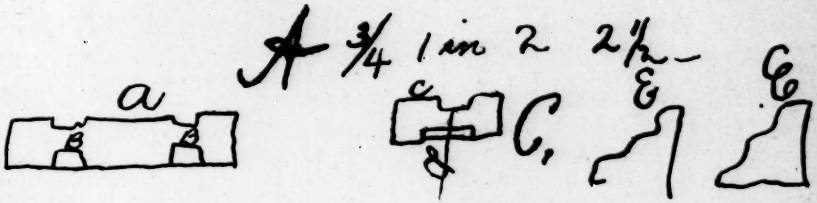
ROBERT WARREN being duly called, on the part of complainant, and sworn, testifies as follows:

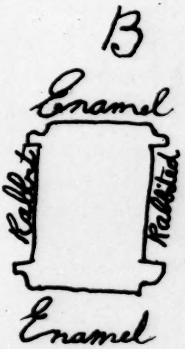
Question 1. What is your name, age, residence, and occupation?

42 Answer. Robert Warren; thirty-four years of age; I reside in the city of New York; I am an advertising agent; my place of business is at the office of Franklin Leslie, 55 Park Place, New York.

Q. 2. If you know Frederick W. Werner, now doing business at Hempstead, Long Island, as a manufacturer of mouldings, please state when and where you first became acquainted with him.

A. I know him; I first became acquainted with him when I went over to the factory of T. C. Ladd & Co., manufacturers of mouldings,





WARREN's SKETCHES—

Brooklyn, E. D.; I think it was the latter part of 1874; I went there to look after the business for Mr. Fox.

Q. 3. At the time you went there what, if any, machinery for enamelling mouldings was in use at Ladd & Co.'s factory?

A. There was one machine in use.

Q. 4. Please state, if you recollect, whether in this machine the enamelling box had a central partition.

A. My recollection is not clear about it; I think it had not.

Q. 5. Why do you think it had not?

A. From the nature of the moulding turned out—the shape of it.

Q. 6. If you can, will you please make a sketch of a sectional view of the moulding enamelled on this machine?

A. I will.

(Witness makes a sketch, and continues as follows:)

The moulding was five-eighths of an inch thick, I think; $2\frac{1}{8}$ inches wide.

Q. 7. Will you please mark on the sketch the surfaces which received the enamel in passing through the box?

A. The top, marked "*a*.".

Q. 8. Was it, or not, applied to the entire upper surface?

A. Yes.

Q. 9. Was this strip rabbetted before it was enamelled, or afterwards?

A. Afterwards.

43 Q. 10. Will you please mark on the sketch where the rabbets were afterwards cut?

A. The parts marked *b b*.

Q. 11. Do you know where or from whom T. C. Ladd & Co. obtained the enamelling machine you refer to?

(Objected to, unless the witness acquired his knowledge immediately; that is, not by hearsay.)

A. I know nothing about it.

Q. 12. What, if any, change was made in the enamelling machinery at T. C. Ladd & Co., while you were there?

A. There was a new one used to practically experiment on; it never got into good order while I was there, anyhow.

Q. 13. Were mouldings enamelled on this new machine?

A. Yes.

Q. 14. What are we to understand, then, by your statement that this machine never got into good running order?

A. The results were unsatisfactory so far as the amount of work got from it; being a new machine, they did not understand the use of it.

Q. 15. If you can, will you please make a sketch of a sectional view of the style of mouldings enamelled on the new machines?

(Witness makes a sketch and continues.)

A. I have marked on the sketch the parts enamelled and the rabbets.

Q. 16. Please state whether or not the rabbets you have marked were cut in the strip before or after the strip was enamelled?

A. After; I mean before; I misunderstood your question.

Q. 17. Then in passing the rabbeted strip through the enamelling box the rabbets were not enamelled, were they?

A. No.

Cross-examination:

X Q. 18. Have you had any mechanical training or learned any trade?

A. No,

44 X Q. 19. Were you employed by Mr. Fox as foreman of his moulding factory?

A. He furnished the money that was put in; I was not employed as foreman.

X Q. 20. Do you know anything about the art of enamelling moulding?

A. Only what I learned there; I was there about six months in the years 1874 and 1875, I think.

X Q. 21. Are you certain they had but one enamelling machine before the new one was introduced?

A. Yes.

X Q. 22. Will you be good enough to make that old enamelling box, as near as you can, upon that piece of paper.

A. I cannot make it, but, as near as I recollect, it was a square box; there was no bottom to it, because the moulding fitted the bottom, and the whiting was on it; a knife that smoothed the moulding was at the end.

X Q. 23. Did the moulding fill the entire bottom of the box?

A. I could not say positively.

X Q. 24. What held the moulding in its place in the bottom of the box?

A. You had better get a mechanic to answer those questions; I did not run the mouldings through, and do not recollect how it was done, except what I have already said.

X Q. 25. You have simply drawn two naked sides; can you tell me or can you illustrate by a drawing the shape of what you call the knives at the ends of the box?

A. They were made to fit the moulding that was run through.

X Q. 26. How many kinds of mouldings did you make?

A. Several kinds; I do not recollect.

X Q. 27. Were the several kinds of different shapes?

A. Yes.

X Q. 28. The knives, as you call them, had to be made to fit each different kind of moulding?

A. Yes.

45 X Q. 29. Will you be good enough to make a draft, as near as you can, of the new machine you mentioned in your examination-in-chief?

A. I could not do it; I could only refer to the work turned out, as I have sketched.

X Q. 30. How many kinds of moulding could have been enamelled in the new machine you have referred to?

A. I do not know.

X Q. 31. How many kinds of mouldings could have been enamelled in the old machine you have described?

A. I do not know.

X Q. 32. Was the old box that you have described a "Marcher" box or not?

A. I don't know.

X Q. 33. As I understand you, you have simply stated as near as you could recollect the kind of work the mill was running on while you were there?

A. I do not know that I made a statement at all in regard to it, with the exception of one-half inch moulding.

X Q. 34. Could or could not the moulding shaped like the figure you last attempted to draw be enamelled in the old box?

A. No.

X Q. 35. Will you explain why it could not?

A. This is square and the other was flat.

X Q. 36. Will you explain how the moulding of the shape of the figure "B" you drew last could be enamelled on the new machine which you have mentioned?

(This line of questions objected to, as the witness has stated that he is not a mechanic, and has simply testified to the different styles of mouldings enamelled in the two machines.)

A. As I am not a mechanic I cannot describe it.

X Q. 37. Did Mr. Wallick call your attention to these two figures when he requested you to testify?

A. In a general way; I don't recollect anything particular.

X Q. 38. Did Mr. Wallick draw the two figures which
46 you have attempted to draw at that time, or at any interview subsequent?

A. I don't recollect.

X Q. 39. When did you first see Mr. Wallick?

A. Last spring.

X Q. 40. How many times have you seen him since last spring?

A. I don't recollect whether it was once or twice.

X Q. 41. Are you prepared to swear that while you can recollect the shape of two mouldings, which you saw made six or seven years ago, you are not able to remember whether Mr. Wallick drew those two mouldings for your information or for any other purpose in your presence within the last six months?

A. What occurred six or seven years ago made more impression than what occurred recently.

X Q. 42. I desire a direct answer to that question.

A. There was something of the kind done, but my recollection is indistinct.

X Q. 43. Where were you when this meeting between Mr. Wallick and yourself took place?

A. At Mr. Styles', in Hudson street; he keeps a paint store; New York city.

X Q. 44. Were the figures drawn on wood, paper, or what material?

A. I do not know.

X Q. 45. Was that at the first or second interview?

A. At the first, probably.

X Q. 46. Could you have recalled these figures, the shape of these mouldings, without the aid of Mr. Wallick's drawings?

(Objected to, as the witness has not stated definitely that Mr. Wallick did make a sketch for him.)

A. I think so on account of the difference between them

X Q. 47. Are you able to swear that Mr. Wallick did, at an interview between you last spring, make drawings of these two mouldings?

(Objected to, as witness has stated that he does not recollect definitely.)

47 A. I think I have given an answer to that before.

X Q. 48. I would like a more definite answer, as you certainly recollect whether these drawings were made or not, and as you have already said you had an indistinct recollection of the fact?

A. I can't swear that he did, and I can't swear that he did not.

X Q. 49. Please draw upon this paper as nearly as you can the shape or outline of some of the other mouldings which were made in this mill while you were there?

A. On the first machine there was made three-quarter inch and inch.

X Q. 50. Please draw them—that is, illustrate the form of the moulding.

A. I can't make the three-quarter inch, but the inch was run together in the form I have marked "C."

X Q. 51. You have made a space on the upper part of this moulding that is marked "C," which looks like a rabbet; is it a rabbet, or not?

A. No, sir; it is not a rabbet.

X Q. 52. You have also made what appears to be a rabbet in the lower side, marked "D;" did you so intend it?

A. Yes.

X Q. 53. During the time that moulding was being enamelled how did you fill the rabbet "D?"

A. That was rabbeted after the moulding was finished.

X Q. 54. This appears to be one-half of the moulding you have drawn, marked "A;" is that so?

A. Half is not a clear question; it is a larger size, and run in two, instead of four, as in half inch.

X Q. 55. It is the same moulding, then, as "A," only a larger size; is that so?

A. As far as I recollect it is a slightly different shape.

X Q. 56. You said you can't draw a three-quarter inch moulding; what is the reason you can't draw it?

A. Because I don't recollect it clearly enough.

X Q. 57. Can you draw any other moulding you made?

48 A. There was two-and-a-half inch made on those machines, each made in one strip; I don't recollect the particular shape, corners, and so on; I don't recollect how the rabbets were formed.

(Witness has marked the two last figures E, E.)

X Q. 58. Please finish them, so as to show the rabbet and the shape in which they were run through the machine.

A. I do not recollect clearly.

X Q. 59. You stated in your examination-in-chief that you did not recollect whether the enamelling box that you found in Ladd & Co.'s mill had a central partition; can you say whether or not the new machines had a central partition?

A. Yes.

X Q. 60. Do you recollect that clearly and distinctly?

A. Yes.

X Q. 61. Be kind enough to draw upon the paper the shape of that partition, or the manner in which it was adjusted in the box?

A. I stated before that I do not understand machinery, so that I cannot draw exactly how it was put in, though I know it was there, from the way the work was turned out.

X Q. 62. I do not ask you to draw exactly how the partition was put in them; I only ask you to give me an idea; can you do so?

A. I do not know what you are driving at.

X Q. 63. I simply ask you to illustrate upon paper the manner, or something like the manner, in which the central partition, which you say you recollect distinctly, was put in there.

A. I have already stated that I do not recollect it, but I know there was one from the nature of the work turned out.

X Q. 64. Is your recollection of the machine, which you mentioned as the new machine, sufficiently clear to recognize it, if it was placed before you?

A. In some points, yes.

X Q. 65. Was it like the model now shown you?

A. It is something like it.

49 X Q. 66. Is that all you can say about it?

A. Yes; as I said before, I recollect the work turned out; that is the shape of the work turned out.

(The model shown the witness is marked "Complainant's Exhibit B. A. R. G.")

X Q. 67. Can you say whether or not the model before you is a model of what you have mentioned as the new machine?

(Objected to, as the witness has already answered the question to the best of his ability.)

A. I have answered that, I think, as far as I can answer it.

X Q. 68. Did you work with that machine?

A. No; not that I recollect.

X Q. 69. You say you do not recollect whether you saw Mr. Wal-

lick once or twice. Can you swear you have not seen him more than three times?

A. I have already answered it; I think I have; I can't swear whether I did or not; I have no recollection of it.

X Q. 70. Can you swear you have not seen him five times in reference to this business?

A. Yes; I can do that.

Redirect examination:

Re-D. Q. 71. Do you recollect whether you first described or sketched for Mr. Wallick the two different styles of mouldings enamelled on the two different machines, or did Mr. Wallick first make a sketch or sketches and ask if they represented the style or styles of such mouldings?

A. I made no sketches.

Re-D. Q. 72. Did you describe them?

A. I did not.

Re-D. Q. 73. With reference to your recollection of the different styles of mouldings made on the two machines, did you not see, every working day while you were at T. C. Ladd & Co.'s factory, the mouldings produced?

A. Yes.

Re-D. Q. 74. And you were there for about six months?

A. Yes; about that.

50 Re-D. Q. 75. About how long was the interview you had with Mr. Wallick?

A. I hardly recollect; from five to fifteen minutes.

(The paper, with sketches "A B C and E E" thereon, offered in evidence, and marked "Complainant's Exhibit, Warren Sketches, September 23, 1881."

ROBERT WARREN.

THOMAS C. LADD, called on behalf of complainant and duly sworn, testifies as follows:

Question 1. What is your name, age, residence, and occupation?

Answer. Thomas C. Ladd; fifty years of age; I reside in Brooklyn, New York; I am assistant book-keeper for Ammidown, Lane & Co., No. 87 Leonard street, New York; I was formerly of the firm of T. C. Ladd & Co., manufacturers of mouldings, in Williamsburgh, New York; I was in that business there about a year, during 1874 and 1875.

Q. 2. When you went into the business what enamelling machinery did you have?

A. Werner's; one that we purchased from F. W. Werner.

Q. 3. Did this machine which you purchased from Mr. Werner have a central partition in the enamelling box?

A. No, it did not.

Q. 4. Did you purchase from Mr. Werner or obtain from him any other enamelling machine than the one you speak of?

A. I used an improved machine which he invented.

Q. 5. That was built, was it not, after you went into the moulding business in 1874?

A. Yes.

Q. 6. Was it purchased from Mr. Werner?

A. No.

Q. 7. Will you then please refer to my question 4, and say
51 whether you ever purchased from Mr. Werner any other enamelling machine than the one referred to in questions 2 and 3?

A. No, sir.

Q. 8. What, if you know, became of this enamelling machine which you purchased from Mr. Werner?

A. I took it from the factory and put it in storage; I do not recollect with whom; I don't know what became of it since then.

Cross-examination:

X Q. 9. Mr. Ladd, you have said that the box which you purchased from Mr. Werner had no central partition; did it or not have a wood or iron bar fitting exactly between the ends, for the purpose of filling the rabbet of a moulding when it was desirable to enamel a moulding of that form—that is to say, with a rabbet through the top or upper side?

A. It had a movable bar of iron for that purpose.

X Q. 10. Were you ever informed by Mr. Werner how long he had used that machine or box and when he had constructed it?

(Objected to as not cross-examination, and as asking for hearsay evidence.)

A. He told me that he built it in 1866.

X Q. 11. Did he tell you whether he had used it since that time?

(Same objection.)

A. He said he had used it in his own mill.

X Q. 12. Would you recognize a diagram of the machine you purchased from Mr. Werner in 1874, and which you say you afterwards took out of the mill and placed on storage, and which you say you have lost all knowledge of?

A. Yes.

Diagram marked "H, A. R. G.," shown witness, and he is asked:

X Q. 13. Do you recognize that as a drawing of the box or machine that you purchased from Mr. Werner, or not?

(Objected to as incompetent.)

A. I recognize it as a correct drawing of the machine.

52 X Q. 14. Please state whether or not the vertical section marked "A, W. T. F." shows the iron bar you mention as fitting between the ends of the machine, and held in place by the angle irons marked "B, W. T. F.?"

(Same objection, and as not cross-examination, and as leading.)

A. I understand perfectly what it represents, and it is the bar which you enquire about.

Redirect examination, reserving objections:

Re-D. Q. 15. When you used the machine purchased from Werner did you or not dispense with the bar referred to in answer to cross 9?

A. We did not dispense with it; we used it.

Re-D. Q. 16. Did you continue to use it?

A. Yes.

Re-D. Q. 17. Did you continue to use it up to the time you got the new machine you say Mr. Werner invented?

A. Yes.

Re-D. Q. 18. You are satisfied, are you, that this machine that you purchased from Mr. Werner had no central partition in the enamelling box?

(Objected to as answered fully and directly in the examination-in-chief, as not affected by the cross-examination, and as therefore mere repetition, and not competent in re-examination.)

A. I have already made my answer on this point.

Re-D. Q. 19. Do you remember when it was you purchased this machine from Mr. Werner?

A. It was on or before the first of May, 1874.

THOMAS CUSHING LADD.

It is admitted on the part of defendants that the last witness (Ladd) had seen and examined the drawing produced in cross-examination this morning, prior to his being put on the stand in this case.

53 United States Circuit Court, District of Pennsylvania.

WASHINGTON WALLICK *vs.* EDWARD I. CANTRELL *et al.*

NEW YORK, *November* 9, 1881.

Attended pursuant to notice.

Present: Hubert Howson, Esq., on behalf of complainants, and J. W. Shortlidge, Esq., on behalf of defendants.

EDWARD J. DICKINSON, a witness duly called and sworn on behalf of complainants, testified as follows:

Question 1. What is your name, age, residence, and occupation?

Answer. Edward J. Dickinson; forty-three years of age; I reside in Monroe street, Brooklyn; I am a publisher, in 23 Murray street, New York city.

Q. 2. If you know Frederick W. Werner, now in the moulding business at Hempstead, Long Island, please state when and where you first became acquainted with him.

A. I do know Frederick W. Werner; I first became acquainted with him in 1873 or 1874, in New York city; it was in reference to my forming of a partnership with Mr. Ladd to go into the moulding business.

Q. 3. If that partnership was ever formed, what was the firm name and what connection had Mr. Werner with it?

A. It was formed; the firm name was T. C. Ladd & Co.;
54 he was to be the foreman, and that was the inducement to my

becoming a member of the firm, on account of his knowledge and ability in the business, as represented to me by Mr. Ladd.

Q. 5. How long did you remain in the firm?

A. Six or eight months.

Q. 6. During that time what, if any, machine for enamelling moulding was used by the firm?

A. There was a machine used.

Q. 7. Where was it obtained?

A. From Werner.

Q. 8. Were the mouldings that were enamelled on this machine rabetted before they were enamelled or after they were enamelled?

A. Rabetted after.

Q. 9. Do you know whether in that machine there was a slotted partition or bar to fit the rabetted strips, to prevent the whiting from flowing into the rabbets.

A. Do you want me to say yes, or no, or what?

Counsel says: "State what you know of your own knowledge, and if you can't say positively yes or no, tell us what you do know about it."

Witness continues: That gives a false impression of the whole thing, for this reason: I don't know whether you want a detailed statement about the machine or an answer "yes" or "no."

Q. 10. If you know of your own knowledge whether or not there was such a bar or partition in that machine, please tell us; if you only know from the work produced, or for any other reason, just tell us.

A. I know from the work produced only.

Q. 11. Please describe, as well as you can, the character of the strips of moulding enamelled on that machine.

A. They were, say, six or eight feet long and perhaps three inches wide, and then sawed apart.

Q. 12. Were they sawed apart after or before they were enamelled?

A. After.

Q. 13. What was the thickness of the strips, about?

A. About half an inch.

55 Q. 14. Were the strips rabbetted or not when they passed through the enamelling machine?

A. They were not.

Q. 15. Please examine the model now shown you and state whether or not the strips of moulding enamelled on that machine were substantially like it, except as to length.

A. They were.

Q. 16. Will you please mark on that model the surface or surfaces that received the coating of enamel?

A. I will; they are the upper surface, which I have marked "A."

Q. 17. Please state whether or not the grooved portions were enamelled.

A. Yes; the whole upper surface was enamelled, but the sides were not.

(Model offered in evidence and marked "Dickinson Exhibit 1," November 9, 1881.)

Q. 18. Please examine the model now shown you of a double-rabbetted moulding, and state whether or not, so far as you know, mouldings of that character were ever enamelled on that machine.

A. They were not.

Q. 19. Was any other enamelling machine used by the firm while you were there?

A. There was not.

(Strip offered in evidence and marked "Exhibit Dickinson No. 2, November 9, 1881.")

Cross-examination:

X Q. 20. How much has Mr. Wallick paid you, Mr. Dickinson, up to date?

A. Hardly enough to pay for my time, which is fifteen dollars.

X Q. 21. How much is he to pay you in the future?

A. Nothing promised.

X Q. 22. What were you paid the fifteen dollars for?

A. For time spent in hunting up witnesses in this case, and correspondence.

56 X Q. 23. What witnesses did you hunt up?

A. I have succeeded in finding only three out of about four or five that I was to look for; I found a man by the name of Charles Tollner, a man named Abberton, I think his name is Thomas; I looked for a man named Burns, but I have been unable to find him; a man by the name of Brush; I found him; that is all I think of.

X Q. 24. Can you recall any others that you were to look for?

(Counsel for Wallick objects to this line of questions as not cross-examination and as cumbering the record.)

A. I think of one other I was to look for, by the name of Tilton, but his testimony don't amount to anything; I don't know his initials; Burns' initial is, I think, H.; I found Tilton at Clymer street, Brooklyn, near Kent avenue; I don't know the number he has a machine shop there; I cannot recall any others.

X Q. 25. Have you mentioned all the witnesses you have seen?

A. I have to the best of my recollection.

X Q. 26. How many times have you been seen in this case in the interest of complainant?

A. When Mr. Wallick visited New York; he has seen me three times; he had remitted fifteen dollars to pay the expenses of the searches.

X Q. 27. How did he come to select you to look for these people?

A. I can't tell.

X Q. 28. Did he tell you what he wanted you to swear to here.

A. He did not.

X Q. 29. What did you say your business was?

A. Publisher; I am connected with two grocery papers; I sometimes write editorials; I sometimes get advertising.

X. Q. 30. Are you employed at a salary?

A. I am not; I get paid by commissions on advertising.

X Q. 31. What do you get paid for writing editorials?

A. No stated thing.

57 X Q. 32. Then your income is obtained from getting advertisements for a trade journal on which you get commission?

A. That's it exactly.

X Q. 33. How long have you been in this business?

A. Five or six years; since 1875 I have been thus engaged.

X Q. 34. Before that what were you doing?

A. The year before that I was in company with Ladd.

X Q. 35. Were you engaged in any business between the time you were in the firm of T. C. Ladd & Co. and — you commenced your present business?

A. I think not.

X Q. 36. What were you doing before your connection with Ladd?

A. I was six or eight months in Florida for the benefit of my wife's health; previous to going to Florida I was in the drug business at 3 Park Row, New York, for two years, up to the time of the panic, in the fall of 1873.

X Q. 37. What did you do before you went into the drug business?

A. I was at school; I went into the drug business when I was sixteen years of age.

X Q. 38. You have stated that the strips like Dickinson's "Exhibit No. 1" received a coating of enamel upon the surfaces "A A A A," and also in the grooves between them.

A. Yes.

X Q. 39. And that the sides "B B" were not coated?

A. Yes.

X Q. 40. Was the bottom marked "C" coated?

A. No, sir.

X Q. 41. Is this model "Exhibit 1" like the moulding that you enamelled in your place?

A. Yes; the same size.

X Q. 42. How many kinds of moulding did you make?

A. Two or three sizes of that kind; that was all, to the best of my knowledge.

X Q. 43. Did you make any mirror-frame mouldings or picture-frame mouldings?

58 A. We made no mirror frame mouldings, but we did make picture frame mouldings.

X Q. 44. That ("Exhibit 1") is not a picture frame moulding, is it?

A. I should think it might be used for that, but I should think it was not strictly a picture frame moulding; it is what I should call a house moulding.

X Q. 45. Will you be kind enough to explain what you mean by a house moulding?

A. I mean the gilt moulding which is used for ceilings and panellings.

X Q. 46. What was your department in the business of T. C. Ladd & Co.?

A. General oversight; I had no particular branch that I knew of.

X Q. 47. Did you sell the goods or solicit orders?

A. I did not; I shipped the goods sometimes and made some collections; my wife was dying with consumption; I was there but a few months, and during that time was there comparatively but little of the time.

X Q. 48. How many sizes of picture frame mouldings did you make?

A. We made a size one-half inch larger than "Exhibit 1," which I think would be better adapted to picture frames.

X Q. 49. Did you have a man connected with your concern by the name of Robert Warren?

A. Yes.

X Q. 50. Was he one of the men you saw in the interest of Mr. Wallick?

A. He was not; I have not seen him in six years?

X Q. 51. Do you know what become of that machine for enamelling mouldings which your firm had?

A. When I left the business it was still there, I think.

X Q. 52. Can you explain how that machine was made?

A. I cannot undertake to do that; I can only speak of the work produced by it.

X Q. 53. You have stated that you had seen F. H. Brush in reference to this case. Did you solicit him to come here to testify in behalf of complainant?

A. No, I did not.

59 X Q. 54. Are you the man that requested him to make an affidavit in their behalf?

A. I am.

X Q. 55. What did you want him to sign an affidavit for?

A. Merely by request of Mr. Wallick.

X Q. 56. Did you pay or tender any money to any witnesses in this case?

A. I did not.

X Q. 57. Tell us, as near as you can recollect, when you were first seen by Mr. Wallick in this matter?

A. About thirty days ago.

Redirect examination:

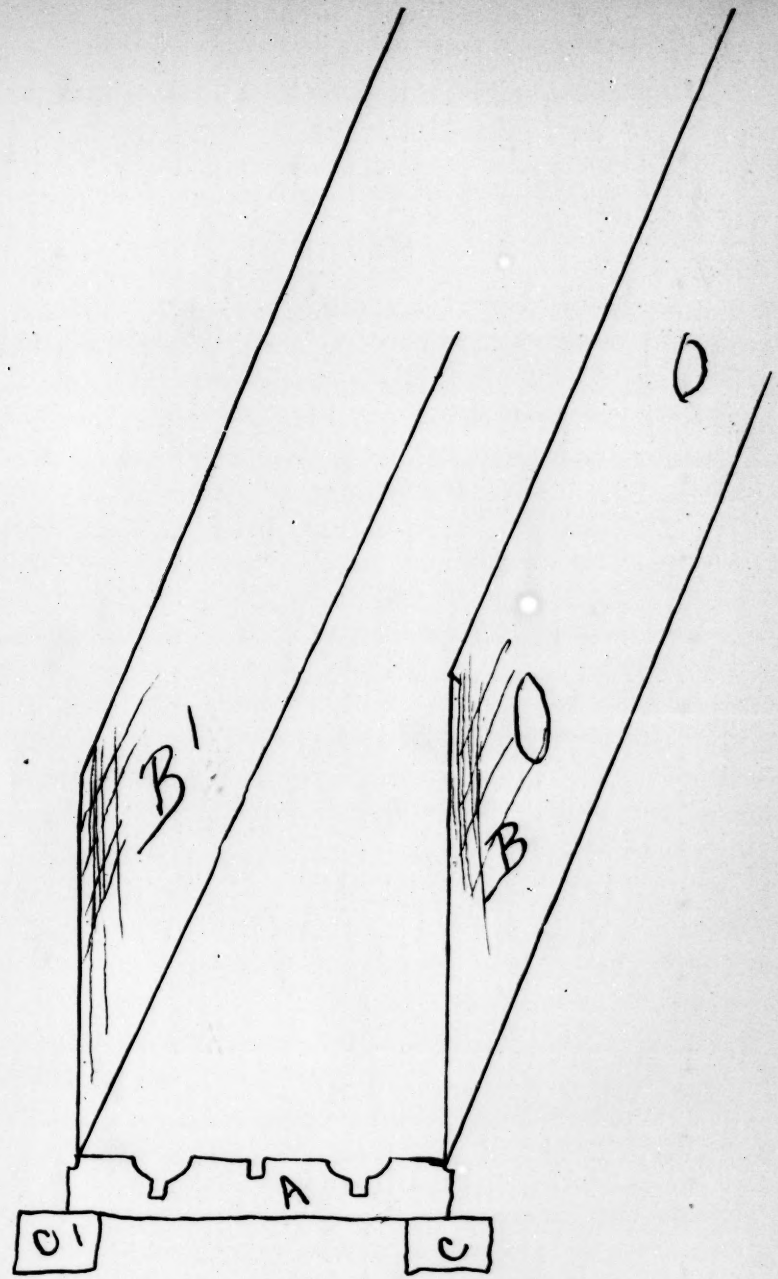
Re-D. Q. 58. Do you mean in you answer to X Q. 42 that this exhibit, "Dickinson No. 1," represents a moulding just as it is, or that it forms mouldings after being cut up?

A. This is sawed apart and rabbetted, making two mouldings out of this piece, after the thing has been passed through the enamelling machine and been coated.

EDW. J. DICKINSON.

Sworn and subscribed before me, this ninth day of November A. D. 1881.

WILLIAM T. FARNHAM,
Notary Public, 59 Liberty Street, New York City.



TOLLNER's SKETCH

12.30 A. M.

Adjourned to 2.15 p. m.

60 2.30 P. M.

Met pursuant to adjournment and the examination of witnesses herein continued, as follows:

CHARLES TOLLNER, being called and duly sworn on behalf of complainants, testifies as follows:

Question 1. What is your name, age, residence, and occupation?

Answer. Charles Tollner, Jr.; thirty-four years of age; reside in Brooklyn; I am a commission merchant; selling picture frames on commission, for H. Tollner, my brother.

Q. 2. If you have ever been in the moulding business yourself, please state when and where.

A. I have been in the moulding business; I think it was in 1873 and 1874; 90 and 92 Fulton street, New York city.

Q. 3. Who was your foreman when you first went into the business?

A. Frederick W. Werner.

Q. 4. What, if any, enamelling machine did you have when you first went into the business?

A. We had what they call a chain machine; call it a chain-feed machine.

Q. 5. Where did you get it?

A. Of F. W. Werner.

Q. 6. Did the box of this enamelling machine have any central partition, a bar to fit the rabbet of the moulding?

A. It did not.

Q. 7. Please state whether the mouldings enamelled on this machine were rabbetted before or after they were enamelled.

A. Rabbetted after.

Q. 8. Will you please make a sectional sketch of the box of that enamelling machine showing a sectional view of the moulding in it?

(The further testimony of this witness objected to, on the ground that it is not rebutting testimony.)

61 A. I will, and here it is: "A" represents the moulding, B B′ the sides of the box, and C C′ the slides on which the moulding moves.

Q. 9. Please state whether or not the moulding received a coating on its entire upper surface.

(Objection continued.)

A. It did.

Q. 10. Please state whether or not you purchased from Mr. Werner any other enamelling machine?

(Same objection.)

A. I did not.

Q. 11. Please state whether or not Mr. Werner ever offered to sell you any other enamelling machine.

(Objected to as irrelevant, incompetent, inadmissible, and not in rebuttal, but original testimony.)

A. He did.

Q. 12. If you did not purchase this machine, who did, if you know?

(Same objection.)

A. I don't know.

Q. 13. If you have ever seen this other enamelling machine of Mr. Werner's please state when and where.

(Same objection.)

A. I think I saw it at T. C. Ladd & Co.'s; I think it was 1875.

Q. 14. How often did you see it?

(Same objection.)

A. Twice.

Q. 15. When you saw it at T. C. Ladd & Co.'s, as you think, was it rigged up for practical work?

(Same objection.)

A. Yes; it seemed so, anyhow.

Q. 16. Did you understand that the machine was being used by T. C. Ladd & Co.?

(Same objection.)

A. I did.

Q. 17. In what respect, if any, did the second machine differ from the one you purchased from Werner?

62 (Same objection, and in addition that this machine has not been identified or connected in any way with Mr. Werner or the testimony taken heretofore.)

A. In one the moulding was fed by a chain; in the other, by a rubber pulley.

Q. 18. In what respect, if you recollect, did the boxes of the two machines differ?

(Same objection.)

A. That I could not state.

Q. 19. Have you any reason to suppose that the two boxes were alike?

(Same objection, and that the witness' guesses are not wanted. We want only the facts, and the witness has already stated that he could not say whether there was any difference or not.)

A. No; I have no reason.

Q. 20. Please state whether or not you saw any strip of moulding

in the box of this enamelling machine which you think you saw at Ladd's factory; and, if yes, what was the character of the moulding?

A. It was a moulding as represented in the sketch which I have just made; it was not rabbetted, of course.

Q. 21. Who, if you know, was the foreman of Ladd's factory at the time you saw the machine there?

A. I think it was Mr. Werner.

Cross-examination:

X Q. 22. Do you know a Marcher box when you see it?

A. I think I do.

X Q. 23. Was not the box sold to you which you say was sold to you by Mr. Werner a simple Marcher box?

A. I think it was.

X Q. 24. When did you first know Mr. Werner?

A. I think it was 1873 or 1874.

X Q. 25. You did not know Mr. Werner from 1866 to 1873?

A. I did not know him.

X Q. 26. Was that the kind of box sold you by Mr. Werner?

63 (Objected to unless it is stated on the record what is shown the witness; the witness having made a sketch of the machine he bought, it is not competent cross-examination to drag in questions in regard to patented drawings such as is offered witness.)

A. No; it is not.

X Q. 27. Was the box you saw at T. C. Ladd & Co.'s like the drawing now shown you?

(Same objection.)

A. It seems to me similar.

X Q. 28. Do you know anything about the box you say you saw at Ladd's or where it came from?

A. No; I do not.

X Q. 29. It has been testified by F. W. Werner that in 1866 he adapted the Marcher box to enamelling moulding with a rabbet or groove on the top or upper side as it was passing through the box for the purpose of receiving a coat of enamel; to do this he says he fitted a bar or piece of wood or iron between what are known as the end plates of the Marcher box, and made also to fit in shape and size, etc., the rabbet of the moulding intended to be enamelled; this bar of wood or iron was no part of the box, but made temporarily for the particular and different mouldings that they happened to be running or working at the time; could not the box which you run or the box which you think you saw at T. C. Ladd & Co.'s have been adjusted without difficulty in the same way, had it been desired?

(Objected to as immaterial, as not cross-examination, the witness not having been produced as an expert, and because the account given of Mr. Werner's testimony is not accurate.)

Mr. Shortlidge produces and places before the witness a diagram, marked "H," A. R. G., and states it has been testified that this is a

drawing of the box before referred to, made in 1866, or a Marcher box adapted in 1866, as shown in said diagram. Mr. Werner said at the time he did not construct the box new, but simply took the Marcher box and rigged this arrangement of block and bar
64 and angle iron to which witness' attention has been called therein.

(Objection continued.)

A. I think it could.

X Q. 30. Do you know how they are making those mouldings now, more particularly in the West?

A. No, I could not say.

Redirect:

Q. 31. Was the enamelling machine you saw at T. C. Ladd & Co.'s factory the same machine which Werner had previously offered to sell you?

A. I was told it was.

(Both question and answer objected to. The answer on the grouud that it is hearsay, and the question on the ground that it is irrelevent and inadmissible on the redirect examination.)

Q. 32. By whom were you told?

(Objected to on the ground that it is hearsay evidence and inadmissible.)

A. By Mr. Werner.

Recross-examined:

X Q. 33. Was that the first or second time you were there?

A. I could not say.

X Q. 34. Whom else did you see there?

A. I saw Ladd and some of the workmen.

X Q. 35. Do you recollect anything else that was said by Werner or anybody else?

A. I do not.

X Q. 36. Do you recollect a single word that was said on that occasion?

A. I do not.

65 X Q. 37. How is it that you can recall that Mr. Werner told you this was the machine he offered to sell you?

A. Because he had offered to sell me the machine, and he said: "There it is."

CHAS. TOLLNER, JR.

Sworn to before me, this ninth day of November, A. D. 1881.

WM. T. FARNHAM,
Notary Public,
59 Liberty street, New York city.

Depositions on behalf of complainant, in rebuttal, before Samuel Bell, Esq., special examiner, at his office, No. 435 Library street, in

the city of Philadelphia, State of Pennsylvania, on the thirteenth day of December, A. D. 1881. Mr. Hubert Howson for complainant, Mr. Shortlidge for defendants.

WILLIAM BAYLEY, a witness produced on behalf of the complainant, being duly sworn, deposes and says in answer to interrogatories:

Question 1. What is your name, age, residence, and occupation?

Answer. William Bayley; I am thirty-one years of age; I reside No. 30 Bank street, in Newark, N. J.; I am a wood-turner by occupation.

Q. 2. If you know Frederick W. Werner, now engaged in the manufacture of mouldings, in Hempstead, Long Island, please state about when and where you first became acquainted with him.

A. The first I ever saw of the man he came to work for Charles Tollner in New York, in 1872, I think; I was working there when he came and got the job; Tollner's business was manufacturing of picture frame mouldings and mounting show cards.

66 Q. 3. What was your work at Tollner's, and how long did you stay there?

A. My business was running a circular saw; I was there about a year and a half.

Q. 4. Where did you work next?

A. With T. C. Ladd & Co., Williamsburgh, Brooklyn, E. D.; I don't know the name of [the] street; I have forgotten; it was in Tuttle & Co.'s coal-yard building.

Q. 5. How long did you remain with T. C. Ladd & Co., and what did you work at there?

A. I remained with T. C. Ladd & Co. over a year, I think; I started with them when they first went into business, and remained with them until about the middle of October, 1874; I have very good evidence of that; I was disgusted with the whole proceedings; the amount of it was that I received check in settlement, and they had no account in the bank, and I never got my money; I left for a better job; I worked there at running the circular saw.

Q. 6. What, if anything else, did you work at with T. C. Ladd & Co.?

A. I worked on the moulding machine and helped on the preparing machine.

Q. 7. Did T. C. Ladd & Co., while you were with them, have more than one enamelling or preparing machine?

A. They had only one.

Q. 8. Please state, if you know, where they got that enamelling machine.

A. They got it from Frederick W. Werner.

Q. 9. Please state whether or not that enamelling machine had in it a central partition or bar to fit the rabbet or rabbets of mouldings being enamelled.

A. It did not.

Q. 10. Will you please make a transverse sectional sketch of that enamelling box as you recollect it?

(Witness makes a sketch and says:)

A. This is a view of the enamelling box, and 'E' represents an end view of the moulding, 'C' represents where it is rab-
67 betted out, 'D' represents where the moulding was divided, B shows the top of the box, and A the end of the box.

Q. 11. Please state whether this rabbetting was done before or after the strip was enamelled.

A. It was done after.

Q. 12. Did or did not the whiting cover the entire upper surface of the strip, including the grooves illustrated in the upper surface in your sketch?

A. It covered the whole top surface except the quirk in the middle which the finishing knife scooped out; by the "quirk" I mean the part I now mark '*f*' in the sketch.

Q. 13. Please state whether or not, while you were with T. C. Ladd & Co., any rabbetted mouldings were enamelled on that machine.

A. There was not.

Q. 14. If any rabbetted mouldings had been enamelled on that machine while you were there, would you or not have known it, and state your reasons, if you have any?

A. There wasn't any rabbetted mouldings prepared on that machine; I was in that room, more or less, all the time, and I never saw any.

Q. 15. Please state what time you missed when you worked for T. C. Ladd & Co.

A. I don't think I missed a day the whole time I worked for them, except a holiday, or election day, or some such day.

Q. 16. Did you see the box of that enamelling machine empty, as well as filled with whiting?

A. Yes.

Q. 17. More than once?

A. Oh, yes; several times.

Q. 18. Please state whether or not you ever cleaned the box out.

A. I have helped to clean it out.

Q. 19. Please state whether or not you saw that enamelling machine before it was purchased by T. C. Ladd & Co..

A. I did.

68 Q. 20. Where?

A. It was in a cellar in Brooklyn, in Fulton street.

Q. 21. What, if any, other machine did you see there?

A. There was another machine there to do the same kind of work.

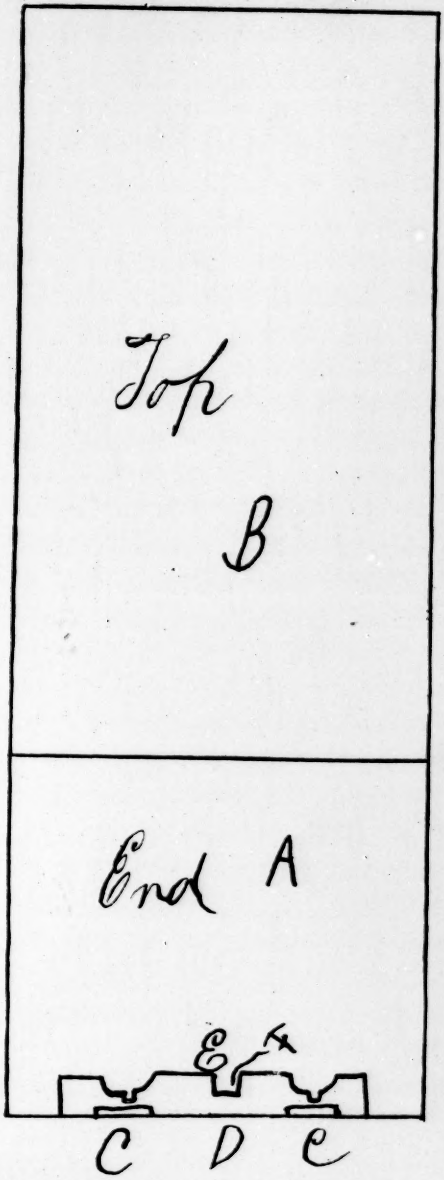
Q. 22. State, if you know, what became of this other machine.

A. It was sold to Charles Tollner.

Q. 23. Who owned these two enamelling machines when you saw them together in a cellar in Brooklyn?

A. A man named Frederick W. Werner.

BAYLEY's SKETCH.



Q. 24. In what, if any, respect did the boxes of these two enamelling machines differ?

A. To the best of my knowledge there was no difference at all.

Q. What was the principal difference between the two machines, if any?

A. It was in the feeding; one had an iron wheel to feed with, and the other had a rubber wheel.

(Sketch made by witness offered in evidence, marked "Complainant's Exhibit Bayley Sketch.")

Cross-examination:

X Q. 26. Who do you work for at Newark?

A. I work for Phineas Jones & Co.

(Counsel for defendant states that he is not at this time prepared to go on with the cross-examination.)

Counsel for complainant states that, inasmuch as the testimony of this witness is merely corroborative of the evidence of witnesses already produced and cross-examined, he declines, in the absence of any good reason for the postponement of the further cross-examination of this witness, to produce him again, and considers his deposition closed.

WILLIAM BAYLEY.

Sworn and subscribed to, this thirteenth day of December, A. D. 1881.

SAMUEL BELL,
Special Examiner.

69 COMPLAINANT'S "EXHIBIT A."

UNITED STATES PATENT OFFICE.

WASHINGTON WALLICK, of Philadelphia, Pennsylvania.

Improvement in Apparatus for Enameling Mouldings.

Specification forming part of letters patent No. 163,825, dated May 25, 1875; application filed October 16, 1874.

To all whom it may concern:

Be it known that I, Washington Wallick, of Philadelphia, Pennsylvania, have invented certain improvements in the manufacture of enameled mouldings, of which the following is a specification:

The object of my invention is a rapid and economical production of enameled mouldings of the character shown in figures 1, 2, and 3 of the accompanying drawing; and this object I attain in the manner and by the apparatus described hereafter.

In order that my invention may be thoroughly understood, it will be advisable to refer to the mode ordinarily practiced of making enameled mouldings of this class.

70 In making the molding, Fig. 2, for instance, it is usual to take a strip of wood of the form shown in Fig. 7 and pass it several times through what is well known as the Marcher box, the

strip resting on the bottom of the reservoir containing the enameling composition. After the proper number of coats of enamel have been given to the strip the latter is cut away from the under side to the line 1 2, and the strip is then planed away by hand, so as not to disturb the enamel, until nothing remains but two rounded moldings.

In making moldings like Fig. 3, according to the usual practice, a strip of wood of the form shown in Fig. 4 is first made, and after its upper surface has been enameled by passing it through the Marcher box, a longitudinal recess (shown by dotted lines) is cut in the back of the strip, first, by a planing machine, and then by a hand-plane, until nothing remains but the two enameled strips, like that shown in Fig. 3.

It will be observed that in neither of these cases can feed-rollers be used for passing the strips through the Marcher box without disturbing the coats of enamel, on which the upper feed-roller must bear.

The main aim of my invention has been to so construct an enameling box and so form the strips of wood that feed-rollers may be employed to pass the strips through the reservoir containg the enameling composition.

For enameled moldings like Figs. 1 and 2, for instance, I prepare a strip of wood, Fig. 5, with a groove, *x*, above for receiving the upper feed-roller, and a groove, *y*, below for receiving the lower feed-roller, and then pass the strip through an enameling box of peculiar construction, so that the rounded edges only are coated, and when these edges have received the proper number of coats I sever the strip, so as to produce either of the moldings, Figs. 1 and 2.

For making moldings like Fig. 3 I prepare a strip of the form shown by Fig. 6, so that upper and lower feed-rollers may be used to force the strip through the enameling box.

71 After the edges of the strip have been properly enameled I sever it in the middle, thereby producing two moldings, like Fig. 3.

The box by which the enamel is applied to these strips is illustrated in the vertical section, Fig. 8, and transverse vertical section, Fig. 9, of the accompanying drawing, the box being, in the present instance, arranged for enameling the strip, Fig. 5.

A and A′ are two plates, which are confined by suitable bolts *a a*, two bent plates, *b b′*, forming, under the circumstances explained hereafter, two reservoirs, B B′, for containing the fluid or semi-fluid enameling composition. The distance between the turned-up portion, *z*, of one plate, *b*, and that of the other plate is equal to the width of the groove *y* of the strip, Fig. 5. A permanent longitudinal bar, *d*, extends from the plate A to the plate A′, and to each side of this bar is secured a plate, *e*, of metal, the distance across the bar and its two plates being equal to the width of the groove *x* of the strip, Fig. 5, against the edges of which groove the said plates bear.

In each of the plates A and A′ there is an opening, conforming in shape and dimensions to that of the strip, Fig. 5, and these openings bear such relations to the turned-up edges of the plates *b b′* and

EDWARD J. CANTRELL, JR. [illegible]

EXHIBIT A.

W. WALLICK.

Apparatus for Enamelling Moldings.

No. 163,825. Patented May 25, 1875.

FIG. 8.

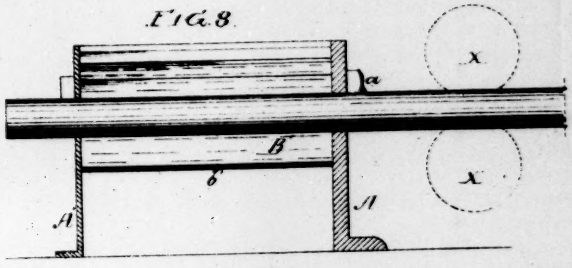


FIG. 9.

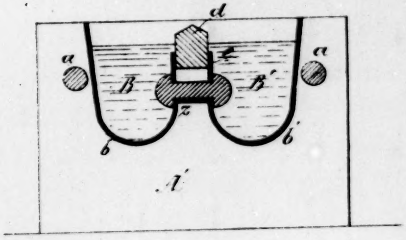


FIG. 1.

FIG. 2.

FIG. 3.

FIG. 7.

FIG. 5.

FIG. 6.

FIG. 4.

Witnesses. Hubert Howson
Thomas McIlvain

Washington Wallick
by his Attys
Howson and Son

to the bar *d* that the strip, when introduced into the box, will be in the position shown in Fig. 9, so that no parts of the strip, excepting the rounded edges, are exposed to the enameling composition. After thus passing the end of the strip of molding through the openings in the plates A A′ the composition may be introduced into the reservoirs B B′, for all avenues for the escape of the fluids are cut off by the strip itself.

Feed rollers X X (shown in dotted lines) may be used for forcing strip after strip through the enameling box, the said rollers in no way interfering with the different coatings of enamel, because they are never in contact with the enameled surfaces.

72 In other words, the enameling box is separated into two reservoirs, partly by a permanent partition and partly by the strip, which is passed through the box so that the edges only of the strip are exposed to the enameling composition, one edge to the composition in one compartment and the other edge to that in the other compartment.

I claim as my invention—

An enameling box divided into two compartments by a slotted partition, and having openings at the ends in a line with the slot in the partition, all substantially as and for the purpose set forth.

In testimony whereof I have signed my name to this specification in the presence of two subscribing witnesses.

WASHINGTON WALLICK.

Witnesses:
HUBERT HOWSON.
HARRY SMITH.

73 In the United States Circuit Court for the Eastern District of Pennsylvania. April Sessions, 1879. In Equity.

WASHINGTON WALLICK
vs.
EDWARD J. CANTRELL and HENRY B. PETTY, trading as Cantrell & Petty. } No. 39.

Testimony on behalf of respondents, taken before Samuel Bell, Esq., United States commissioner, at his office, No. 435 Library street, in the city of Philadelphia, State of Pennsylvania, on Tuesday the 4th day of June, A. D. 1880. John Walker Shortlidge, Esq., for respondents; Charles Howson, Esq., for complainants.

Respondents offer in evidence a box, which is marked Respondents' Exhibit No. 1.

Complainant's counsel admits that the box, Respondents' Exhibit No. 1, was constructed by or for complainants and accords substantially with the description and drawings of the patent upon which suit is brought.

74 Respondents also offer in evidence two bars, which are marked, respectively, Respondent's Exhibits Nos. 2 and 3.

Respondents also offer in evidence the box known as the "Robert Marcher Box," for which letters patent were obtained Oct. 21, 1851, and marked Respondent's Exhibit No. 4.

Objected to by complainant's counsel as not proven; also as irrelevant and immaterial and not warranted by the pleadings.

WASHINGTON WALLICK, a witness produced on behalf of respondents, being duly sworn, was examined as follows by Mr. SHORTLIDGE:

Q. 1. What is your name, age, residence, and occupation?

A. Washington Wallick; I am 40 years of age; reside at 507 York avenue, Philadelphia; I am a manufacturer of picture frames and mouldings.

Q. 2. Do you understand the art of enamelling mouldings; and, if so, when and where did you acquire your knowledge?

A. I understand the art of enamelling mouldings; I first directed my attention to that art in 1867; I was a pattern maker prior to that; I did not learn that trade, but took the position as pattern maker when I first came to Philadelphia; I learned the trade of carpenter and joiner; I served a regular apprenticeship at that trade, and worked as a journeyman.

Q. 3. Did you pick up your knowledge of enamelling mouldings in the same manner that you did the trade of pattern making?

A. I did.

Q. 4. You say you turned your attention to enamelling
75 mouldings in 1867; did you become at that time familiar with the state of the art and all the appliance used in the art?

A. What was used in the business there in our establishment I was familiar with.

Q. 5. Did you use what is known as the "Marcher box" in your establishment?

A. We used a box like Respondents' Exhibit No. 4.

Q. 6. By examination of the inventions for the purpose of enameling mouldings do you now know that to be the Marcher box?

Objected to by Mr. Howson as incompetent and irrelevant.

A. By examination of the models in the Patent Office, I do.

Q. 7. Examine respondents' Exhibit No. 1, and state whether that is the invention for which you obtained letters patent No. 163,825, dated May 25, 1875.

A. It is.

Q. 8. Examine Respondents' Exhibits Nos. 2 and 3; if you can, state whether or not you ever used those bars; if you cannot, please say whether you used bars substantially like them.

A. I cannot say whether we ever used these bars, but we did use bars substantially like them.

Q. 9. When did you become an inventor of improved appliances for enameling mouldings?

A. In 1872.

Q. 10. I understand you commenced working upon this box in 1872; is that so?

A. Yes, sir.

Q. 11. You operated this contrivance a long time before you obtained a patent upon it; did you not?

A. No, sir.

76 Q. 12. Do you mean to say that you did not run this box in your establishment before you obtained a patent upon it?

A. I did run it before I obtained a patent for it.

Q. 13. How long?

A. I presume it was about eight or nine months before I applied for the patent. I ran it in 1873 by steam power and in 1874.

Q. 14. Did you run it in the shape in which it now is in 1873?

A. Yes, sir; I think it was in the latter part of 1873.

Q. 15. You have stated that you had operated this box for eight or nine months before you obtained your patent; and now you say that you ran it in 1873; which was it, eight or nine months before your patent was granted, or in 1873?

A. I worked with the box off and on from the time I commenced in 1873 until I applied for the patent.

Q. 16. What time in 1873?

A. I think it was from July to January.

Q. 17. What improvement did you make on it after you first set it up?

A. There was no material improvement after we first set it up.

(Mr. Shortlidge explains to the witness that by the term "setting up the machine or box" he means for the purpose of enameling mouldings.) Witness repeats: We made no material improvements on it after we first set it up.

Q. 18. What improvement of any kind, whether material or immaterial, did you make after you first set it up; and be good enough to distinguish what those improvements were by the box before you?

A. Since I set it up, the sides and a part of the ends of the box were cast solid?

Adjourned pursuant to agreement.

77 FRIDAY, *January 7th*, 1881.

The direct examination of Washington Wallick, a witness on behalf of respondents, resumed.

Present: Mr. Hubert Howson, for complainant; Mr. John Walker Shortlidge, for respondents.

Q. 19. Be good enough to fix the time when you had this invention completed, in your judgment?

A. The spring of 1874.

Q. 20. About what time in the spring?

A. I don't think I can give the exact month; I should judge as early as February or March.

Q. 21. You applied the rubber feed rollers before you considered the machine perfected, did you not?

Objected to by Mr. Howson as leading and assuming.

A. I did.

Q. 22. Who was your foreman at the time you applied the rubber feed rollers?

A. I don't recollect.

Q. 23. I understood you to say that it was not until you applied

the rubber feed rollers that you considered the box perfected; am I correct?

A. Yes.

Q. 24. You have said that you understood the state of the art of enameling at that time, 1874. Be kind enough to explain what part of the box, Respondents' Exhibit No. 1, is new and what part is old.

78 A. The claim in the invention is the bar inside the box and closed bottom. The sides extending to the bottom I know were old at that time; the ends are different from the old. The difference in the ends is that we use the iron at the front end of the box, and the wood at the back end of my box: In the old box they used the iron at the back end, and the wood at the front end.

Q. 25. In respondents' Exhibit No. 4 you said that you recognized the common Marcher box. Do you mean to say that in using this box the moulding comes in its finished state through the wooden end?

A. No, sir.

Q. 26. Explain what you meant by saying that you placed the iron end in your box where the wooden end is in the Marcher box, or that you reversed the ends.

A. My box being stationary, and the Marcher box being movable, the boxes operate differently, but in both cases the ends give the finish to the moulding.

Q. 27. In the Marcher patent, dated April 3d, 1860, where the inventor has applied a mechanical feed, the moulding is driven through the Marcher box in the same manner that it passes through yours; is not this so?

A. It passes in the same direction through the Marcher box, shown in the patent, as in my box; that is to say, the enameled moulding in its finished state leaves the box at its iron end, if you have iron at one end and wood at the other. My impression is that you can't finish moulding unless you have iron at one end.

Q. 28. In reply to question 24 you stated that in the Marcher box they used a wooden end where you used an iron end. Will this answer apply to the Marcher patent of 3rd April, 1860.

A. It will not.

79 Q. 29. Do you claim the steel or iron end plate used on your box, with an opening cut the reverse of the moulding intended to be enameled, as a part of your improvement?

A. In connection with the bar and inclosed bottom I do.

Q. 30. Then you claim a combination as part of your improvement?

A. I do.

Q. 31. Explain what parts of your box are embraced in the combination you claim.

A. I claim the bar and the bottom of the box in combination with a plate cut the reverse to fit the rabbit of the moulding.

Q. 32. Is the bar new or not?

A. The bar is my improvement.

Q. 33. Is the bar new or old?

Mr. Howson objects to any attempt to separate one part of the invention from another.

A. I claim the bar is new.

Q. 34. You have stated that the sides were old with the exception of the part that forms the bottom of the box; these parts I understand you to claim as new. Is that so?

Same objection as to question 33.

A. I claim the bottom plates are new.

Q. 35. Do you claim the wooden end as part of your improvement?

Same objection as to question 33.

A. I do not.

Q. 36. Do you claim as part of your improvement the iron or steel end plate cut the reverse of the moulding designed to be enamelled?

80 Same objection as to question 33.

A. I make no separate claim on the end plate. An iron end plate with an opening cut the reverse of the moulding intended to be enameled was in use in our establishment before I made my improvement.

Q. 37. Why did you put these plates of iron upon the bar? (referring to Respondents' Exhibit No. 3.)

A. The principal object was to make it cheap, as an experiment.

Q. 38. Would it then have answered your purpose just as well to have made the bar of steel, iron, or wood?

A. Wood would not have answered on account of wear it would have cut it down. Iron or steel would have answered.

Q. 39. You state that the main aim of your invention was to construct an enameling box that feed rollers could be employed to pass the strips through the box. Is that so?

A. It was one of the objects.

Q. 40. You have also said that "it will be observed that feed rollers cannot be used for passing strips through the Marcher box without disturbing the coats of enamel, on which the upper feed roller must bear." Is that true?

A. That is one of the objects of my invention.

Q. 41. Do you now mean to assert as a fact that moulding cannot be passed through the Marcher box by means of feed rollers without disturbing the enamel, as stated in your specification?

A. By using the rubber rollers they can be passed through the Marcher box.

Q. 42. Can a rubber roller be used on a coating of enamel without disturbing it?

A. It can.

81 Q. 43. You were mistaken, then, when you stated in your specification that it could not be done. Were you not?

A. The reference there was to hard rollers. At the time of the

application for my patent I knew rubber rollers could be used for that purpose.

Q. 44. Explain how the box marked Complainant's Exhibit C infringes on your improvement.

A. By the bar or partition and enclosed bottom, the slotted partition.

Q. 45. Will you designate what you call the bar in that box?

A. It is the partition in the box, after the two sides are bolted together, and the bottom as constructed with guide plates.

Q. 46. What sides are bolted together?

A. The two sides of the bar.

Q. 47. Designate what you call the bar in the box, marked Complainant's Exhibit C.

A. (Witness indicating the insides of the two boxes). When bolted together by the two end plates they form one box, with the bar in the centre.

Q. 48. Are you not using this box (Complainant's Exhibit C) in your establishment at the present time?

Objected to by Mr. Howson as immaterial.

A. When it is adjusted and in operation it is the same in principal.

Q. 49. That identical box you purchased of Mr. Werner, did you not?

A. Yes; I did.

Q. 50. Does it not operate more satisfactorily than yours does?

A. It does not.

82 Q. 51. Are you still using your own box, as described in your specification?

Objected to by Mr. Howson as immaterial.

A. I am.

Q. 52. Are any other parties using your box, as described in your specification?

Objected to by Mr. Howson as immaterial.

A. There was one.

Q. 53. Who was that party?

A. J. P. Wilkinson's Sons, Cherry street, above Sixth street.

Q. 54. When did they cease using your apparatus?

A. I can't tell.

Q. 55. When did they last pay you for the privilege of using it?

Objected to by Mr. Howson as immaterial.

A. About twenty or twenty-one months ago.

Q. 56. What did they pay you annually for the use of that box?

Objected to by Mr. Howson as immaterial.

A. They were to pay me one hundred dollars a year, and the cost of the first machine in addition, for the first year.

Q. 57. Did they pay you?

A. They paid me for the first year.

Q. 58. How much?

Objected to by Mr. Howson as immaterial.

83 A. Two hundred and twenty-five dollars in goods and cash.

Q. 59. What did they pay you the next year?

A. Nothing.

Q. 60. Why did they cease using your machine?

[A.] I do not know that they have ceased using it.

Q. 61. Why do you not collect your license fee?

A. I intend to try and collect it.

Q. 62. What was the style of your firm when you constructed the first machine?

A. Wallick, Johnson & Co.

Q. 63. When did you dissolve, and how was the dissolution effected?

A. September, 1876. I think I withdrew in consideration of a release of myself by the remaining parties; they assumed the liabilities and retained the assets.

Q. 64. Among those assets was not the machine marked Respondents' Exhibit No. 1 included, and did they not acquire the right to use that machine, as well as the right of property in it?

A. It was virtually understood, when I applied for this patent, that the firm should have the entire use of it while I was a member of the firm. It was not intended, when I retired from the firm, that they were to have the use of any part of my patented machine.

Q. 65. Were not the expenses of conducting your experiments and the expenses incident to obtaining your patent defrayed by the firm of Wallick, Johnson & Co.?

A. I cannot say that they all were; I think the most of them were.

Q. 66. What is the name of your present foreman?

A. Charles Schroeder.

Q. 67. Did not Charles Schroeder suggest the principle of this box to you, and assist in constructing it?

84 A. He did not suggest the principle to me, but he was one who assisted me in working the box and putting parts of the box together after they were made under my instructions.

Q. 68. Your patent does not cover the end plates in two pieces, does it?

Objected to as immaterial.

A. It does not.

Cross-examined by Mr. HUBERT HOWSON for complainant:

X 1. You have been asked several questions as to when you made the invention and when you perfected your machine. Will you give us a connected and concise history of the invention from the time you conceived it until you applied for a patent?

A. We were manufacturing prepared mouldings, meaning Wallick, Johnson & Co., in a not-rabbited state, and the low price at

which they were sold at that time caused me to suggest the plan of rabbiting them before they were prepared; that was late in the fall of 1872, just before the holidays. I had control at that time of the entire business, and more especially the manufacturing of mouldings; we also manufactured mantel and pier mirrors. After sticking the moulding in the shape described, rabbited, I then placed a bar in the box, where it would prevent the whiting from flowing into the rabbit. After several attempts did not meet with success, owing to the moving of the box; this was in the latter part of 1872 and the beginning of 1873 and in the spring of 1873. Not meeting with success in keeping the whiting out of the rabbit, it being a movable box, I concluded to fix a machine with one pair of rollers, for the purpose of forcing the strips through, with a box made stationary, with iron bottom or iron placed on wood, so that the whiting would not stick.

85 This worked better, and we could prevent the whiting from flowing into the rabbit, but the moulding stuck fast in the box, a great deal, and we made several changes with the two rollers, believing if we could feed them through it would work satisfactorily. The box and the two-roller feed we commenced working in March, 1873. In this way we worked several lots of moulding, some giving entire satisfaction except when the moulding would stick fast, not having sufficient power. I then built a six-roller machine to force the strips through the box. That was in the spring of 1874. I think after giving this a trial it proved that the box worked satisfactorily, and the fault had been in the feed not having sufficient power to force the strips through. I used that machine with the six rollers, I think, perhaps six or eight months.

X 2. Was the box that you used late in the fall of 1872 especially made for the purpose?

A. It was the Marcher box altered especially for the purpose.

X 3. Explain what were the alterations.

A. By placing the bar in the box to fill the rabbit of the mouldings, and prevent the whiting from flowing in.

X 4. What, if any, change was made in the bottom and ends of the box?

A. We made no change at that time in the bottom, but changed the ends so that they would fit in the rabbit as part of the bar or guide in the box. That was in the year 1872 and early in the year 1873.

X 5. What kind of mouldings did you enamel with that box?

A. The two-faced moulding, like Fig. 6 of the drawing of my patent.

X 6. So that I understand that the bottom of this moulding was not coated with any enamel, is that so?

A. It was not coated with enamel at the bottom.

86 X 7. About how much moulding did you enamel with this box?

A. Enough to give it a trial, perhaps one or two thousand feet.

X 8. Am I to understand you worked the box over the moulding, which was held stationary, as you had been using the Marcher box?

A. Yes, sir.

X 9. The difference being that you put a partition in the box to fit the rabbet of the moulding and had a different form of opening in each end plate to correspond. Is that so?

A. Yes, sir.

X 10. Did you use this box of 1872 when you applied a pair of feed rollers in 1873?

A. No, sir.

X 11. How was this 1873 box constructed?

A. The same as the altered box, with the addition of a close bottom of wood and iron, and made permanent instead of movable. The strips of moulding were forced through the box by the rollers.

X 12. What kind of moulding did you make in this box with a pair of feed rollers?

A. We made the two-faced moulding and the moulding with the rabbet top and bottom, as in Fig. 5, in my patent.

X 13. Was the box you used in 1874 with three pairs of rollers the same as you used in 1873 with two feed rollers?

A. It was constructed the same, and perhaps was the same.

X 14. At the time you applied for your patent how many boxes had you made on this principle?

A. We made three or four boxes, including the one altered in 1872.

87 X 15. Are we to understand that the boxes made in 1873 and 1874 were made especially?

A. Yes, sir.

X 16. Can the strips of moulding be fed through your enameling box by other means than feed rollers?

A. They can be fed through by hand, but it is a very slow process.

X 17. Have you any idea how much moulding you enameled on your improved box in 1873?

A. I could not say; we used it off and on; the quantities were two two thousand feet at a time, when we could make it work.

MONDAY, *January* 17*th*, 1881.

Cross-examination of WASHINGTON WALLICK, a witness called on behalf of respondents, resumed.

Present: Mr. Hubert Howson, for complainant; Mr. John Walker Shortlidge, for respondents.

X 18. I understand you to say that the box you used in 1874, with the six-roller feed, was precisely the same construction as the box you used in 1873, if not identically the same box; is that so?

A. The construction of the box was the same, excepting that the bottom was made of wood in the boxes made in 1873; the last one was made of iron entirely, except one end being of wood, and the bar or bottom partition part iron and part wood.

X 19. Are we to understand that from time to time, during 1873, you enameled lots of moulding in this box?

88 A. We did on the box.

X 20. And while some of the moulding done on this box during 1873 was satisfactory, in other cases the strips of moulding would stick in the box for want of sufficient power to push through; is that so?

A. Yes, sir.

X 21. In what respect, if any, did the box you used in 1873, as you have stated, differ from that shown and described in your patent?

A. There was no material difference in the construction of the box. The shape of the box was not exactly the same, and the bottom was square instead of being curved, as shown in the patent.

X 22. I understand then that while you had the box substantially as shown in your patent in 1873, and enameled lots of moulding with it, its use from a commercial point of view was not entirely satisfactory until you increased the power of the feed; is that correct?

A. That is correct.

X 23. In answer to question 39 you say that to construct an enamelling box that feed rollers could be employed to pass the strips through the box was one of the objects of your invention. What other objects had you?

A. It was for the purpose of rabbiting a two or four faced moulding previous to the operation of enameling, and the general object was to save the rabbiting after the enameling and the extra labor in clearing them off after they were rabbited.

X 24. Is this what you refer to when you say at the beginning of your specification "The object of my invention is a rapid and economical production of enameled moulding of the character shown in Fig. 3?"

A. It is.

89 X 25. How long did the firm of Wallick, Johnson & Co. enjoy the use of your improved machine up to the time you withdrew from the firm?

A. It was considerably over two years.

X 26. What, if any, profit did the firm acquire from the use of your machine during that time?

A. It would be impossible for me to tell exactly, but I have no doubt is was several hundred dollars.

X 27. State what understanding you had with the firm, in regard to the use of the machine by them, while you were a member.

A. The understanding was that the firm was to have the exclusive use of it as long as I was a member.

Re-examined by Mr. SHORTLIDGE:

R. Q. 1. Was most of the money of Wallick, Johnson & Co. used in paying the expenses incurred in obtaining the patent?

A. The most of it was.

R. Q. 2. When did Wilkesons get that machine from you?

Objected to as not redirect.

A. To the best of my recollection it was in the winter of 1877 and 1878.

R. Q. 3. Your improvement was perfected at that time, was it not?

A. The improvement was perfected in reference to the box.

R. Q. 4. When did Wilkesons pay you the $225, at the time you delivered the machine or afterwards; and if afterwards—how long?

Objected to as not redirect and irrelevant.

A. The amount was paid in merchandise, a part before
90 and a part after the delivery of the machine, how long after I cannot tell; it was within, I think, six months—I think it was all paid in merchandise; I am not positive.

R. Q. 5. When did you last make a demand for money or payment from the Wilkesons, and what answer did they make to the demand?

Same objection.

A. I think it was about eight months since; he said that he was not using the machine any more, that he had bought it instead of leasing it, and that he was getting up a box of his own, which would work better than that, and that I might have the box back, and if I would pay him the cost of the machine I might have it too. I then told him I would sue him for the amount of my claim. At this time my claim was $96.50, less some merchandise that I had got on account. He said I would have to sue.

R. Q. 6. Did he not tell you that it was not competent to do the work for which it was intended, and that, among other things, the bar would not keep the enamel out of the rabbit, and that the enameled moulding had to be finished by hand after it came from the machine?

A. He did not tell me anything of the kind. He did, however, say that he didn't think a fixed plate without a pressure on the moulding would ever work successfully, as if one moulding was cut smaller than the other he was compelled to fill up the space with whiting. I told him that I was working it successfully, and would be satisfied if he would return the machine and pay up what was due, which I would expect.

R. Q. 7. Did you ever try to get Hall & Garrison to use your machine?

A. I did, at the time I introduced it to Wilkesons, and several others also.

91 R. Q. 8. What objection did these several parties make to it?

Same objection as above.

A. They made no objections. They did not come to see it.

R. Q. 9. Do you finish your moulding by hand, after it leaves the machine?

A. No, sir.

R. Q. 10. Do you not sell your moulding for an inferior price, on

account of the rabbits being partially filled with whiting, making it necessary to clean them by hand?

Same objection by Mr. Howson.

A. No, sir; I don't.

R. Q. 11. What did you pay Werner for his machine?

Objected to as irrelevant and immaterial.

A. Three hundred dollars.

R. Q. 12. In cash?

A. Part cash and part notes.

R. Q. 13. What did you offer to sell your machine at, when you were offering it to the trade?

Same objections.

A. I did not offer to sell my machine at any price, but offered to lease it.

R. Q. 14. What did you want with Werner's machine?

A. Werner represented, when notified that he was infringing on my patent, that he would sell the machine he had and go into the manufacture of carpenter's moulding. I then asked him what he would ask for his machine. I inferred from this that he intended to abandon the business. He replied $300. It being a much larger machine and double the size of the one I was working, and
92 would cost perhaps three times as much as my machine for building the patterns and making the machine, I accepted the offer, thinking I could exhibit the machine to show the similarity between his machine and mine in the suit now pending, as he, Werner, told me it was the same as Cantrell & Petty were using, and built in the spring of 1875.

R Q. 15. Do you consider Werner an infringer upon you, and do you intend to sue him for infringment?

A. Yes, sir; I do consider him an infringer, and I intend to prosecute him.

R Q. 16. Did you not send him a license to use your machine?

A. No, sir.

R. Q. 17. Where you not at Mr. Werner's place, and did you not see the maeninery he had in operation, and that he had four or five of these machines running at that time?

Same objection.

A. I was there last year and saw but two machines, one of which I bought.

R Q. 18. You bought the old one, did you not, leaving a new and improved one in his possession?

A. I bought the machine with a wooden frame; the two boxes were both the same as far as I could see. I could not tell which was the oldest machine.

R Q. 19. What would it cost to make a machine or box in accordance with the model, Complainant's Exhibit C?

Same objection.

A. I judge, if you include the patterns, it would cost from twelve to fifteen dollars, not including the feed.

R Q. 20. Look at Robert Marcher's diagram of his invention, marked reissue March 15, 1859, No. 671. In Fig. 2 you will
93 observe the side plates, C C, terminating at the lower edges in flanges, and secured to the sides of the box; and explain wherein they differ from the side plates secured to the sides of Werner's box (Exhibit C), and state also whether in your judgment they are not equivalents?

Objected to as not re-examination.

A. There are no centre plates in the Marcher box, or rather no slotted partition; the drawing of reissue March 15, 1859, No. 671, C C are the outside plates and adapted to prepare one-faced moulding, the whiting being contained between the two plates, and not separated by a partition. I don't consider these plates the equivalent of the plates you refer to in Exhibit C.

Recross-examination:

R. X. When you purchased from Werner a machine for $300, what did it include in addition to the box?

A. The driving power for the machinery, which would have cost me more money if I had made the patterns to get it up.

W. WALLICK.

Sworn and subscribed before me this 17th day of January, A. D. 1881.

[L. S.] SAMUEL BELL,
Special Examiner.

94 United States Circuit Court, Eastern District of Pennsylvania.
April Sessions, 1879. In Equity.

WALLICK
v.
CANTRELL, *et al.* } No. 39.

Testimony taken before A. R. Griffin, attorney-at-law and notary public, at his office in the village of Hem-stead, Queens county, State of New York, on the 25th day of January, 1881, on behalf of the defendants in the above-entitled cause.

Present: Mr. John Walker Shortlidge, for respondents; Mr. Hubert Howson, for complainant.

It is agreed that the following deposition of Frederick W. Werner in the above-entitled matter shall be taken by and before A. R. Griffin, attorney-at-law and notary public, with the same force and effect as though the said Griffin had been appointed special examiner by order of the court.

JOHN WALKER SHORTLIDGE, Esq.,
For Respondents.

HUBERT HOWSON, Esq.,
For Complainants.

It is agreed that the models marked Complainant's Exhibit B and Complainant's Exhibit C, also marked A. R. G., are substantial representations of Complainant's Exhibits B and C.

95 Examination-in-chief of FREDERICK W. WERNER, a witness for and in behalf of respondents:

Q. 1. State your name, occupation, residence, and age.

A. Frederick W. Werner; occupation, manufacturer; residence, Hempstead, Long Island; aged 39 years.

Q. 2. Are you familiar with the art of enameling? If so, state when and where you acquired your knowledge, and give us a brief history of the experience you have had in that business.

A. I am familiar with the art. My first knowledge of enameling I acquired in my father's business at Brooklyn, L. I., and my knowledge commenced at the age of about 12 years, and have been engaged in this business ever since at intervals.

Q. 3. Are you familiar with the various inventions and improved machinery used for this purpose?

A. Yes.

Q. 4. Have you made improvements yourself?

A. I have.

Q. 5. Were you in your father's employ during your minority?

A. Yes—same as all other sons.

Q. 6. Were you employed by the Marcher Manufacturing Co. at any time?

A. I was.

Q. 7. Are you familiar with the patents or inventions of Robert Marcher for the purpose of enameling mouldings?

A. Yes.

Q. 8. The attention of the witness is called to the Complainant's Exhibit B, and he is asked, Did you ever see a box arranged like that at the Marcher Manufacturing Co.'s, or substantially like it?

Objected to as leading.

96 A. Not exactly like it.

Q. 9. When did you first see a box for the purpose of enameling mouldings constructed like or substantially like the model marked Exhibit B?

A. Well, I got up one in 1866 like this Exhibit B, except there was a slight difference in the under part or bottom.

Diagram marked H. (A. R. G.) shown witness.

(Here follows diagram marked p. 97.)

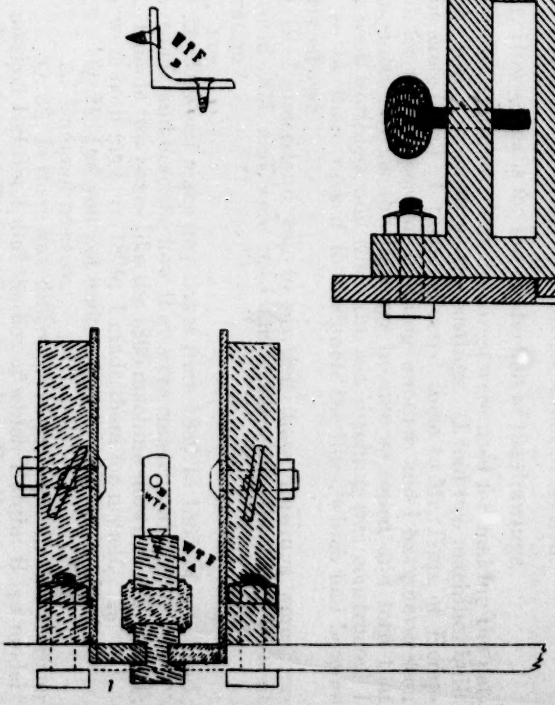
Q. 10. Is this a diagram of the box you constructed in 1866?

Objected to as leading.

A. It is.

Q. 11. Will you explain in what respect this diagram or the box shown in this diagram differs from the Marcher box.

A. There is no difference. (Witness illustrates by box marked Respondents' Exhibit I.) This is the original old Marcher box. By

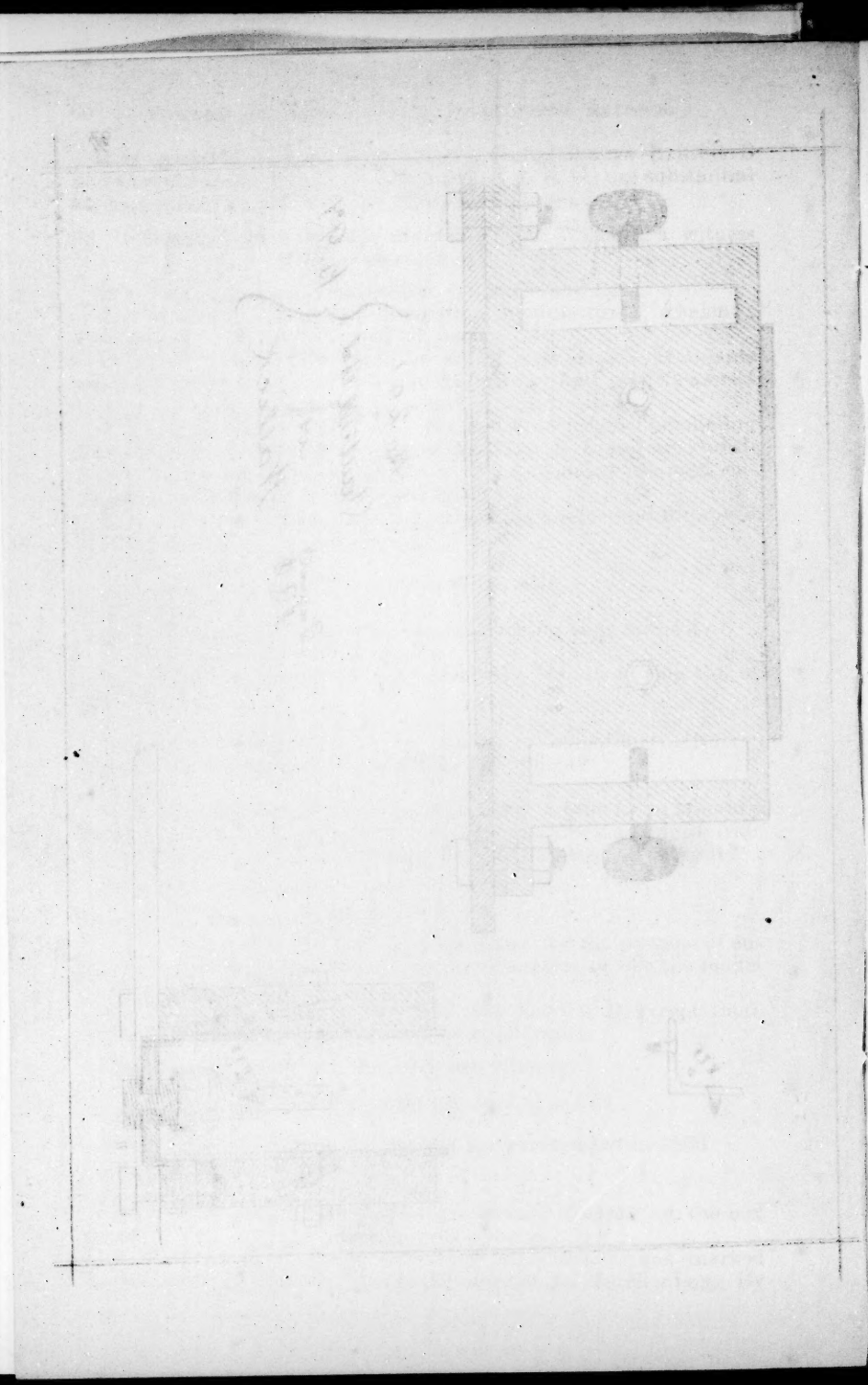


No. 201.
Cantrell Ad.
vs.
Wallick.
} p. 94.

Diagram A
A.Q.S.

97

EDWARD J. CANTRELL



placing those blocks or piecies of wood in the box it makes the box shown in diagram H, the only difference being that this is a hopper form, and in the diagram the plates are perpendicular; this box was just put together a few moments ago for the purpose of illustration by me.

Q. 12. There is nothing then used in this box in addition to the Marcher box except the blocks of wood?

A. That is all the difference.

Q. 13. I understood you to say that you made this alteration or used the Marcher box in this form in 1866.

A. I did.

Q. 14. Did you use a bar to fill the rabbit made of wood, or iron, or both?

A. I first used wood, afterwards iron.

98 Q. 15. Why did you afterwards use iron?

A. On account of the wear.

Q. 16. Did you make any further improvements in boxes for enameling mouldings; and, if so, when?

A. I did, in 1875.

Q. 17. Did you make improvements for any purpose prior to 1875?

A. I did, but not to use them; I made drawings of the box marked Complainant's Exhibit C in 1871.

Q. 18. When you constructed the box, in 1875, did you follow those drawings, or did you depart in any respect from them?

A. The same drawings were used without alteration.

Mr. Howson calls for the production of the drawings.

Witness continues: The drawings were used for making the patterns by which to construct the castings. (I had two machines built at the same time.) I then delivered them to Mr. Titus, of Hempstead, for the purpose of building another, and I have never seen them since. By use the drawings became so soiled and torn that they were worthless, and when the last machine was constructed I had to be there myself to designate the lines, which had become nearly effaced.

Q. 19. I understand you to say that those drawings were completed in 1871, and were used for constructing the boxes without alteration?

A. Yes.

Q. 20. Did you make any boxes from 1886 to 1865 of any kind; if so, when, and describe how they were constructed?

A. I made two boxes like the 1866 machine shown in diagram H; they were both made in 1870; I made them for myself.

Q. 21. Did you not make a box in 1867 or in 1868?

99 A. I am not positive.

Q. 22. Is there any difference in principle in this Marcher box, marked Exhibit I, and the box of which Exhibit B is a model?

A. There is no difference in principle. Exhibit I is a practical box, used every day in my business, and by everybody in the business, constructed of adjustible plates held in position by set-

screws in conformity with Marcher's patent, the sides are plain plates with flanges on the bottom or lower edges. The end plates being held in position by the side plates and the set-screws, the end plates having holes cut the reverse of the moulding intended to be enameled, as it would be impossible to enamel a moulding without having the end plates cut to fit the moulding.

Mr. Howson objects to question No. 22, in which counsel calls Exhibit I a Marcher box, as it appears Exhibit I contains something in addition to the Marcher box proper, making it a materially different structure.

Q. 23. In your last answer you did not allude to the wooden blocks shown in Exhibit I; are not these blocks identical with the improvements claimed by Washington Wallick is his specification of patent No. 163,825, and shown in model marked Exhibit B?

Objected to as leading, and as it does not appear that the witness is here as an expert. Counsel for respondent offers the witness as an expert in appliances for enameling moulding.

A. They are the same.

Q. 24. Please explain why they are the same.

100 A. The wood or iron bar I have used, placed in the rabbit of the moulding to prevent the flow of whiting or composition into the upper rabbit, is just the same as used by Washington Wallick in his machine. Wallick screws two plates of steel or iron to the block of wood placed in the rabbit; I fill the lower rabbit with a piece of wood or iron held in position by the flanges of side plates. From the looks of this model, Exhibit B, and the specifications, Wallick accomplishes the same purpose by using iron flanges.

Q. 25. Is there any difference in the end plates having orifices cut the reverse of the moulding intended to be enameled, and have end plates with openings cut in this way always been used as shown in Exhibit B?

Objected to as leading.

A. There is no difference. They have always been used in this manner.

Q. 26. Is there any difference in principle between the large flanges forming the bottom of Wallick's box and the shorter flanges forming the bottom of box marked Exhibit I, or are they substantially the same?

A. There is no difference in principle.

Witness is shown model marked Complainant's Exhibit C, A. R. G.

Q. 27. In what respect does that box differ in principle from the Marcher box, as shown in drawing marked Enameling Machine, patented in October 21, 1851, number 8448?

A. In principle it is the same, this box having side compartments in addition to the Marcher box. The plates for the purpose of keeping the enamel out of the rabbits are substantially the same as the side plates shown in drawing No. 8448, without the flanges.

Witness is shown two side plates marked Respondents' Exhibit K.

101 Q. 28. Are not these the plates shown in No. 8448, and are they not part of model marked Exhibit C?

Objected to as leading.

A. They are.

Q. 29. Did or did not Marcher use plates with and without the flanges?

Objected to as leading.

A. He did, and they are used to-day in the Marcher machines.

Q. 30. In the box marked Exhibit C which kind of plates are used?

A. Plates without the flanges.

Q. 31. Could you use plates with the flanges in making that moulding and in adjusting that box as it is there, particularly if you were enameling mouldings of a larger size?

A. I have always used the plates with flanges in working the larger sizes.

Q. 32. Before you used the iron bar in the Marcher box as shown in Exhibit I, what kind of wood did you use in the upper and lower rabbits?

A. I used hard wood.

Q. 33. Mr. Wallick says in his specification, "It will be observed that in neither of these cases," (alluding to the mouldings shown in figures 2 and 3 in his diagram No. 163,825), "can feed rollers be used for passing the strips through the Marcher box without disturbing the coats of enamel on which the upper feed roller must bear. The main aim of my invention has been to so construct an enameling box and so form the strips of wood that feed rollers may be employed to pass the strips through the reservoir containing the enameling composition." The application for this improve-

102 ment was made October 16th, 1874 Mr. Wallick claims, as set forth in his testimony, that he commenced his alleged improvement in the latter part of 1872. Had you used feed rollers for passing the moulding through the Marcher box prior to that time?

Objected to as immaterial.

A. I had. I used them long ago in connection with the machine I built in 1866.

Q 34. How many wheels or rollers did you use, and of what were they made?

A. I used two wheels, and they were made of iron.

Q 35. Did they answer the purpose for which they were intended and did they work satisfactorily?

A. They answered the purpose, but did not work to my entire satisfaction.

Q 36. Was it because they were made of iron that they did not work satisfactorily, or was it because two rollers were not sufficiently powerful to drive the moulding through?

A. It was not on account of their being made of iron, nor being

not powerful enough to drive the moulding through, but because I had to put too much pressure on to feed the moulding through the box, and cut off lumps of composition. I finally substituted rubber rollers for the upper part, and retained the iron wheels for the lower part.

Q 37. Will rubber wheels, or iron wheels, or hard wood wheels, if properly used, disturb the coatings of enamel on which the upper feed roller must bear, as alleged in Mr. Wallick's specification?

A. They will not; I have used wheels made of those substances—that is to say, hard wood, rubber, and iron. I am constantly running wheels made of either of these substances on the enameled surfaces, without in the least disturbing the coating of enamel even in the finished state.

103 Q 38. This suggestion then as to the main aim and object of Mr. Wallick's invention is based upon a mistake, in fact, is it not?

A. It is.

Q. 39. Mr. Wallick claims as his invention an enameling box divided into two compartments by a slotted partition, and having openings at the ends in a line with the slot in the partition. Has he made those opening that he designates in a line with the partition, and which in point of fact are the holes cut in the end plates the reverse of the shape of the moulding designed to be enameled, in anywise different from the end plates heretofore in use, since Robert Marcher's invention, and which he describes in his specification for reissue No. 940, dated April 3d, 1860, as follows: "The end pieces of the said hopper have their lower edges cut to correspond with the transverse form of the moulding," and which he further describes as a part of his claim in his said specification?

Objected to as immaterial.

A. It must of necessity be the same.

Q. 40. Is or is it not usual to make one end of the box of wood?

A. Some parties do; I generally use iron.

Q. 41. Is there any substantial difference between the side plates shown in diagram H (A. R. G.) and the plates marked exhibit K (A. R. G.) and in the plates marked C C, in diagram 8448, figure 2, Robert Marcher's patent, and the side plates in exhibit C (A. R. G.), screwed to the sides of the two boxes, or are they in principle identical or equivalent?

A. In principal they are identical.

Q. 42. As I understand you, the only addition which you have made to the boxes known as the Marcher box is to unite two

104 of them so as to make a double box, so to speak, and which being adjustable enables you to work any sized moulding in common use.

Objected to as assuming.

A. That is so

box, or is it construed of different parts of different boxes, and does that account for the difference in the side plates and flanges?

Q. 43. Is the box marked Exhibit I (A. R. G.) a perfect Marcher

A. It is a perfect Marcher box. The plates are intended to be and were the same, but I cut off the flange of one of them to adapt it to other work.

Cross-examination of witness by Mr. HOWSON:

X Q. 1. You say you have been in the enameling business since you were about 12 years of age at intervals; what intervals?

A. I meant to be understood and to say I was familiar with enameling mouldings since I was 12 years of age. I learned the moulding business in my father's shop. I started in the moulding business in 1866, and have been engaged in that business ever since; not all the time for myself, but part of the time as foreman for other concerns.

X Q. 2. About what time were you employed by the Marcher Manufacturing Company?

A. It was during the war—might have been in 1863.

X Q. 3. When did you become familiar with the patents of Robert Marcher, as you have said?

A. When I was making my own machines, in 1866.

X Q. 4. In what respect did the boxes you saw at the Marcher Manufacturing place, as referred to in answer to question 8, differ from Complainant's Exhibit B?

105 A. This one, Exhibit B, has the block in the rabbit, and they had the side flanges with the rabbit turned the other way. Exhibit B is for making two-faced strips, while Marcher's is for making all kinds. This box of Wallick's will not make all kinds of mouldings.

X Q. 5. Were the boxes you saw used at the Marcher Manufacturing Company used for enameling two opposite faces of a strip of moulding at the same operation?

A. There were many different kinds of mouldings, some prepared on three sides at one operation; at that time they made the moulding with the rabbit the other way from that shown in Exhibit B.

X Q. 6. The box shown in the drawing of the patent of Marcher, 8448, Oct. 21, 1851, is for enameling one-face moulding, is it not?

A. The piece of moulding shown in that figure is a two-faced moulding, the two faces being those on opposite sides of the bead. It is a mirror frame moulding.

X Q. 7. In this box shown in the patent 8448 is the enameling composition contained between the two plates C C?

A. Yes.

X Q. 8. Then you do not find in the box 8448 the central partition referred to in Wallick's patent?

A. No; it is not there; Wallick's is not intended for making that kind of mouldings.

X Q. 9. What became of the box which you say you made in 1866?

A. The box made in 1866 was put on one of the machines made in 1870; we made a new frame and new feeding apparatus and used the old box.

X Q. 10. Had you been using the 1866 box steadily or regularly up to that time?

A. Yes; regularly; pretty much every day up to that time.

X Q. 11. Then what became of it?

106 A. Sold it to T. C. Ladd & Co. I sold it to them in the winter of 1873 or spring of 1874. It had not been used from 1871 to 1874, and it was not used by Mr. Ladd until some time after I sold it to him. I myself had not used it between 1871 and 1873, because I was out of business.

X Q. 12. Was the box you sold to T. C. Ladd & Co. identically the same box that you made in 1866?

A. It was the identical box; no part had been substituted or changed after 1866.

X Q. 13. Do you know of your own knowledge what became of this box after you sold it to T. C. Ladd & Co.?

A. No, I do not know what became of it or where it is dow. Mr. Ladd told me he had it somewhere on storage. He told me this about two years ago. I asked him about it two years ago. I wanted to get it to use here.

X Q. 14. In what way was the box sold to T. C. Ladd & Co.?

A. I sold him the machine direct.

X Q. 15. What became of the boxes which you say you made in 1870?

A. Those machines were destroyed; they were worn out.

X Q. 16. What time in 1870 did you make them, and how long before you went out of business?

A. I can tell you, because I have it here, (referring to memorandum,) May 2d, 1870.

X Q. 17. When were the machines destroyed?

A. In the latter part of 1871. I broke them up and sold them for old iron. They were made too light.

X Q. 18. When did you go into business again?

A. I went as foreman in the spring of 1874, and went into business for myself again in July, 1875. I had forgotten I was with Charles Tollner in 1873, in the moulding business, in New York.

X Q. 19. I understand you the next box you made was made in 1875?

107 A. Yes; in January or February, 1875.

X Q. 20. When did you make the diagram referred to as marked H, (A. R. G.)?

A. About a year ago last winter.

X Q. 21. Under what circumstances?

A. To give it to Mr. Shortlidge.

X Q. 22. Did you make it from memory, or with the assistance of machines you had in your place?

A. I made it from memory and a perfect knowledge of the machine. I could build you one to-day. I use nothing like it in my place.

X Q. 23. Where does Mr. Titus live now?

A. He lives in Brooklyn, I believe. They do business in New York, 43 Duane St.

X Q. 24. When did you deliver the drawings you refer to to Mr. Titus?

A. I think in June, 1875.

X Q. 25. When was it you substituted iron for wood, as referred to in question 14?

A. I cannot tell exactly; it was some time after I built the machine. I first used hard wood, probably in 1869 or 1870. I used iron about a year before I went out of business.

X Q. 26. I understand you to say Exhibit I was put together by you to-day.

A. Yes.

X Q. 27. And that it is a Marcher box with the addition of two strips of wood to fill the rabbits of the mouldings; is that correct?

A. Yes.

X Q. 28. In the Marcher box are not the openings which are cut the reverse to fit the moulding to be enameled always cut in the edges of the plates?

A. Not always, it depends on the shape of the mouldings.

108 X Q. 29. The particular openings in the end plates of box, Exhibit I, are formed so as to correspond with the blocks of wood which form the partition, so that the moulding may be properly enameled without allowing the whiting to get into the rabbits; is that not so?

A. No, sir. The openings are made to fit the moulding, without any reference to the pieces. The pieces are more particularly for a guide. If the opening the reverse of the moulding in the end plates is properly cut, it will keep all the enamel out of the rabbit, merely allowing it to become stained.

X Q. 30. If the pieces of wood referred to are so much smaller than the rabbit of the moulding as to allow some of the whiting to flow into the rabbit, will not a moulding enameled on such a machine be defective?

A. No, sir. If the piece of wood fills the rabbit too closely, or too tight, it will leave a ragged sharp edge to the edge of the moulding. It wears out the plate and forms a bead under the rabbit of the moulding.

X Q. 31. In the enameling of mouldings when you use hard rollers to feed the strips through the box, was the first coating of enamel allowed always to become dry before you passed it through the second time?

A. Always.

X Q. 32. If you had passed it through a second time before the first coat had become dry, would not the rollers have injured the first coat?

A. We never do that; we always allow the first, second, and third coats to dry, and then dampen and cut them down. What I mean by cutting them down is to take the rough bumps off.

X Q. 33. You say, in answer to question 36, that the feed rollers did not work satisfactorily because you had to put too much pressure on; pressure on what?

109 A. I had too much pressure on the moulding, between the

upper and lower roller—that is, too hard a grip, because we only had two iron rollers.

X Q. 34. And without this heavy grip of the rollers you could not force the strips through the box?

A. Unless we pushed on them, and we did not want to do that.

X Q. 35. How many men did you have in your employ from 1866 to 1871?

A. I suppose I had 15 or 20 hands, mostly boys.

X Q. 36. Did you have any foreman?

A. I had one foreman; he is now dead. I was my own foreman. I was in partnership part of the time with T. H. Brush. He is now somewhere in Brooklyn. I think he is in the real estate business. I think I was in partnership with him about four years, just before I quit business in 1871.

X Q. 37. The Marcher boxes do not have the slotted partition in the centre, do they?

A. No; the Marcher boxes do not have the partition.

Re-examination by Mr. SHORTLIDGE:

R Q. 1. You constructed the box marked Exhibit I for the purpose of illustrating that the Marcher box can easily be adapted and the manner in which you in fact did first adapt it to enamel a double-faced moulding, such as is shown in model marked Exhibit B. Is the box as now adjusted fit to put into practical operation, and could you by using it as it now is produce a fair marketable article?

Objected to as assuming.

A. Yes, sir; that is so.

FREDERICK W. WERNER.

Sworn and subscribed before me this 24th day of January, A. D. 1881.

[L. S.] A. R. GRIFFIN,
Notary Public, Queens County, N. Y.

110 United States Circuit Court, Eastern District of Pennsylvania.
April Sessions, 1879. In Equity.

WALLICK
v.
CANTRELL *et al.* } No. 39.

PHILADELPHIA, *March 17th*, 1881.

Examination of JOHN GRIMM HOYER, a witness called on behalf of respondents.

Present: Mr. Charles Howson, for complainant; Mr. John Walker Shortlidge, for respondents,

Q. 1. What is your name, age, residence, and occupation?

A. John Grimm Hoyer; I reside at 939 North 3d St., Phildelphia; I work in enameling mouldings.

Q. 2. How long have you been engaged in that business?

A. For twelve years.

Q. 3. Are you familar with the appliances, the patents, and the state of the art of enameling mouldings?

Objected to by Mr. Howson as leading.

A. I am.

Q. 4. Are you familiar with the Marcher patents?

Same objection.

A. I am.

111 Q. 5. Who are your present employers?

A. Cantrell & Petty, the respondents.

Q. 6. Please say whether or not you ever saw a box for enameling mouldings like Respondents' No. 1, and, if so, state when and where.

Objected to as leading, also that it has not yet been made to appear that the witness knows how the box referred to works.

A. I saw a box in 1873, or somewhere about then, in New York, in Worth street, near Baxter, in Valentine's place. I do not know how the box was made, but the moulding ran the same way. The moulding was identically like that in the exhibit, Respondents' Exhibit No. 1.

Mr. Howson objects to the last sentence as being in response to a leading question by Mr. Shortlidge not put upon the record, and further objects to the whole answer and to all further interrogatories in this line as inadmissible under the pleading.

Q. 7. Must the box that you saw in operation at Valentine's have been constructed like Respondents' Exhibit No. 1, or may it have been constructed in a different manner, to enamel the kind of moulding that you saw passing through the machine?

Same objection.

A. I don't know exactly, but it must have been in principle the Marcher box, or this box, Exhibit No. 1.

Q. 8. Do you mean that Respondents' Exhibit No. 1 is identical in principle with the Marcher box?

112 Objected to as leading, and because the witness has not been qualified as an expert.

A. I do.

Q. 9. Are you familiar with Wallick's patent, No. 163,825?

Same objection.

A. Yes, sir.

Q. 10. Explain the alteration that Wallick made in the Marcher box, and upon which he claims a patent.

Same objection.

A. The only difference that I see is the bar—this piece of wood, Respondents' Exhibit No. 3.

(Mr. Shortlidge here suggests that the witness had better add, "With sheet-iron on the sides," to identify it more particularly.)

Witness resumes: I mean the piece of wood with sheet-iron on the sides.

Q. 11. Mr. Wallick says in his specification No. 163,825: "It will be observed that in neither of these cases (meaning the enameling of pieces like figures 3 and 4) can feed rollers be used for passing the strips through the Marcher box without disturbing the coats of enamel on which the upper feed rollers must bear." Is that true or not?

Same objection.

A. No; it is not.

Q. 12. Can feed rollers, made either of hard wood, rubber, or iron, be used for the purpose of running the moulding through the Marcher box without disturbing the coating of enamel?

Same objection.

A. It don't make any difference which you use.

113 Q. 13. Have you any preference. If so, state which kind you prefer, and if the preference extends to all cases.

A. I have a preference; I prefer the rubber always.

Q. 14. Mr. Wallick, in his testimony in answer to question No. 29, as to whether he claims as part of his invention the steel or iron end plates cut the reverse of the shape of the moulding intended to be enameled, replies, "In connection with the bar and enclosed bottom I do." Are the end plates of the Marcher box, as shown in diagram No. 8448, R. Marcher enameling machine, patented October 21, 1851, cut in precisely the same manner?

Same objection.

A. Yes, the end plates must always be cut to fit the moulding.

Q. 15. Would it be possible to enamel a piece of moulding without having an iron or steel end plate cut the reverse of the moulding intended to be enameled and to fit it accurately?

Same objection.

A. No, sir. It has to always fit it exactly.

Q. 16. Examine plate No. 671, R. Marcher enamelling machine, reissue March 15, 1859, and say whether there is any difference in principle between the flange plates C C, figure 2, and the side plates and bottom of Respondents' Exhibit No. 1?

Same objection.

A. There is no difference in principle.

Q. 17. State whether or not your employers are making the moulding shown in Complainant's Exhibit No. 1, marked Hoyer No. 1.

114 A. They make it, but not much. I have only run it twice since I have been with that firm; that is, for two and a half years. By running it twice I mean we made two lots, about 100,000 feet in all.

Q. 18. Do you use the box, Complainant's Exhibit C, adjusted in that form for making any other kind of moulding?

A. We do not.

Q. 19. In what respect, if any, does Complainant's Exhibit C differ from the Marcher box?

Same objection.

A. The difference is in these two side boxes.

Q. 20. Is that a difference in principle or is it a modification of the Marcher box?

Same objection.

A. It is the same principle in running. I consider it a modification of the Marcher box.

Examination of JOHN GRIMM HOYER resumed.

Q. 21. What is the principal use of the bar that Wallick uses to fill the top rabbit, as shown in Complainant's Exhibit B?

A. For the purpose of a guide.

Q. 22. If the end plate, called the bit or scraper, is made properly to fit the moulding intended to be enameled accurately, will it keep the enamel out of the rabbit without a bar or anything to take the place of the bar?

Objected to by Mr. Howson, as immaterial and leading.

A. Yes, sir.

115 Q. 23. Is the bar necessary to keep the enamel out of the rabbit of the moulding?

Same objection.

A. It is not necessary.

Q. 24. Are or are not the guides placed on the outside of the box?

Same objection.

A. Yes.

Q. 25. Look at the box which I now show you, and say whether or not you know who made it?

Same objection.

A. I made that box.

Model offered in evidence, and marked Respondents' Exhibit L.

Q. 26. State what that model (L) is.

A. It is the box Cantrell & Petty have been using since I have been with them. It is an exact model of the alleged infringement in every particular.

Q. 27. Look at the box I now show you, and state who made it.

A. I made it.

Q. What is it a model of?

A. It is a model of the Marcher power box.

The same is offered in evidence and marked Respondents' Exhibit O.

Q. 29. Have you ever used a machine of which Exhibit O is a model, and if so when?

116 A. I did use such a box in 1873, the last of the year.

Q. 30. Is the model, Exhibit O, the same in principle as that shown in the diagram No. 671, R. Marcher, reissue March 15, 1859?

Same objection as above.

A. It is.

Q. 31. Look at the piece of moulding which I now hand you, and state, if you know, how it is enameled.

A. I enameled this piece of moulding in the form in which it now is, in the box of which Exhibit L is a model, as it is now adjusted, with the exception of the end plates, which of course must fit the different forms of moulding, the feed rollers running on the top of the enameled surface.

The piece of moulding referred to by witness is offered in evidence, and is marked Respondents' Exhibit M.

Q. 32. Is the moulding, Exhibit M, shown in Mr. Wallick's specification; and if so, how is it designated?

A. Figure 5.

Q. 33. Look at Mr. Wallick's diagrams particularly, and say whether you see a figure corresponding to moulding marked Exhibit M?

A. No.

Q. 34. Is not figure 7 precisely like it?

A. It is like it.

Q. 35. You make this particular moulding, Exhibit M, in what Mr. Wallick terms in his specification the method ordinarily practiced, do you not?

Same objection as above.

A. Yes, sir.

117 Q. 36. Do you consider your way of making this particular moulding preferable to the method or way described by Wallick? If so, state what advantage there is in your method.

Same objection.

A. It saves lumber; there is a waste in making it the way he does.

Q. 37. Mr. Wallick gives as a reason for enameling it the way he describes and illustrates that feed rollers cannot be used to drive it through the box in the form shown in Exhibit M without disturbing the enamel; is this so or not?

Same objection.

A. It is not so; we are enameling that way all the time.

Q. 38. Look at the piece of moulding I now hand you, and state whether or not that is the same moulding as that shown in Wallick's specification in Fig. 6.

Same objection.

A. No, it is not.

The piece of moulding referred to is offered in evidence, and marked Respondents' Exhibit N.

PHILADELPHIA, *April 7th*, 1881.

The cross-examination of JOHN GRIMM HOYER.

Present: Mr. Hubert Howson, for complainant; Mr. John Walker Shortlidge, for respondents.

118 X Q. 1. You have used the term principle several times in your testimony, as, for instance, in answer to question 16; will you explain what you mean by the term principle?

A. I mean it is the same thing.

X Q. 2. Do you mean that it is of the same construction?

A. Yes.

X Q. 3. And that they operate in the same way?

A. They operate in the same way.

X Q. 4. Does that explanation of your understanding of the term principle apply also to your answer to question No. 20.

A. It is the same box except the outsides.

X Q. 5. Then I understand you to say it is the same box, but with some difference—is that what you mean?

A. I give the same answer that I did before.

X Q. 6. Then the two boxes are not precisely the same in construction?

A. Not in the making—not made the same.

X Q. 7. Then, if your previous explanation of the term principle is correct, they are not the same in principle, are they?

A. I don't understand you; please explain.

X Q. 8. What do you mean by the term modification in answer No. 20?

A. I do not know exactly what I mean by that.

X Q. 9. What did you understand by the terms "any other kind of mouldings," in question No. 18, in making your answer to that question?

A. They run it through, as shown in Exhibit L—they run all the mouldings they make as shown in Exhibit L—except the double-rabbit mouldings.

X Q. 10. Do you enamel double-rabbit mouldings of more than one design?

119 A. Only one.

X Q. 11. In the enameling described in your answer to question No. 31, where was the enameling composition placed?

A. In the middle; in the central compartment of the box.

X Q. 12. Then when you so use the box the side compartments are not used, are they?

A. They are not.

X Q. 13. And when the box is arranged as shown in Exhibit L, the inside plates, which I now mark Q Q, are adjusted in a differ-

ent position from that which they occupy when the box is adjusted as in Complainant's Exhibit C, are they not?

A. No, sir.

X Q. 14. Are the end plates in the two boxes different?

A. No, sir.

X Q. 15. In this box, Exhibit L, the end plates are cut in their lower edges to fit the moulding, are they not?

A. Yes. They are cut to fit the moulding.

X Q. 16. And in the other box, Complainant's Exhibit C, the openings through which the moulding passes are not cut on the lower edges of the plate, are they?

A. No, not in Exhibit C.

X Q. 17. These enameling boxes that you use are how long, in the direction in which the moulding passes through them?

A. They are of various lengths; it does not make any difference.

X Q. 18. About how long is the longest box you use?

A. I cannot say exactly.

X Q. 19. Is it over a foot long in the direction in which the moulding passes?

A. I do not know.

120 X Q. 20. Is that the best answer you can give?

A. Yes, sir.

X Q. 21. Is it more than two feet long?

Objected to, as already answered by the witness.

A. No, sir.

X Q. 22. In passing a strip of moulding through such a box as you do use, do not the end plates guide the strips of moulding?

A. They do not.

X Q. 23. What does guide the strips?

A. Outside there are iron wheels which feed and guide the moulding in connection with the inside guides, which are the flanges.

X Q. 24. Do not the strips of moulding fit the openings cut for them in the end plates?

[A.] No; the end plates fit the mouldings. The scraper has to fit the moulding and not the mouldings the end plates.

X Q. 25. The end plates and the scraper are the same thing, are they not?

A. No, sir. (Witness pointing to the end of the box.) This I call the end plate, and the bit cut to fit the moulding the scraper.

X Q. 26. To my previous questions I applied the term end plates to the part which you now call the scraper. Do not the mouldings fit the openings cut for them in the scraper?

A. The scraper has to be always cut to fit the mouldings.

X Q. 27. And the scrapers during the operation of enameling are stationary, are they not?

A. Yes, sir.

X Q. 28. I now call your attention to question 22, and your

121 answer thereto, and ask you to explain how the enamel would be kept out of the rabbit without a bar, or anything to take the place of the bar.

A. If you make the scrapper fit the rabbit exactly it keeps the whiting out.

X Q. 29. If you pass a double rabbit moulding through an enameling box containing enameling composition sufficient to properly enamel the moulding, but without a bar or anything to take the place of the bar, what is there to prevent the composition from getting into the rabbit?

A. The scraper.

X Q. 30. Will you explain how, under such circumstances, the scraper will keep the enamel out of the rabbit?

A. I did explain to you before. The scraper has to fit the rabbit exactly, and then it keeps the whiting out.

X Q. 31. Is that the best explanation you can give?

A. It is.

X Q. 32. In enameling the moulding referred to in question 31, what kind of feed rollers did you use?

A. Rubber rollers. I can use other kinds of hard surface rollers, but I prefer the rubber rollers.

X Q. 33. What were you doing in Valentine's place, as you state in 1873?

A. I went there to look at that machine. I was not at work there.

X Q. 34. About what time in 1873 was it?

A. It was shortly before Christmas, 1873.

X Q. 35. Have you read, or had read before you, the testimony of F. W. Werner, given in this case, or any portions of it?

A. No, sir.

JOHN G. HOYER.

Sworn and subscribed before me this the 7th day of April, A. D. 1881.

SAMUEL BELL,
Special Examiner.

122 United States Circuit Court, Eastern District of Pennsylvania.
April Sessions, 1879. In Equity.

WALLICK
v.
CANTRELL *et al.* } No. 39.

It is hereby agreed that if the testimony of James W. Camphell, of the city of New York, was taken in the above matter, he would testify as follows:

That in or about the year 1874 he invented a device or apparatus for enameling mouldings, constructed substantially as shown by the diagram hereto annexed, marked Exhibit Z, in Fig. 1 of which A represents a longitudinal section of moulding as it passes through the enameling apparatus aforesaid, and A 1 and A 2 the rabbits or grooves ploughed in the same. B represents a bar of wood or iron planed down to fit the rabbit A 1, and which with the moulding

passes through the box C, which contains the enameling composition.

The said bar B is fitted to the rabbit A 1, for the purpose of preventing the enameling composition from filling the rabbit A 1 as aforesaid.

In Fig. 2, on said diagram, A represents a transverse section or end of said moulding as it passes through said enameling apparatus or box. B represents the transverse of the bar adapted to fit the rabbit A 1, as above described and for the purpose aforesaid, and D represents angle irons fastened to the ends of the enameling box, and screwed to the bar B, to hold it fimly in place, all and substantially as and for the purpose set forth.

123 The above-described device was the invention of the said James W. Campbell, and was put into practical use and operated as described for more than eight months prior to May, 1875.

It was also constructed as above described and sold by the said James W. Campbell to other parties for the purpose hereinbefore set forth.

The said moulding was driven through the said box by feed rollers, which ran in the rabbits A 1.

It is further agreed that the said James W. Campbell shall be subject to call for cross-examination, if desired.

Philadelphia, March 3d, 1881.

CHARLES HOWSON, Esq.,
For Complainants.
JOHN WALKER SHORTLIDGE, Esq.,
For Respondents.

It is also agreed, upon the same terms, that if Robert F. Cartwright, of New York city, was examined he would testify as follows:

I am a member of the firm of Adams & Cartwright, machinists of New York city. The enameling box shown in diagram annexed, marked Exhibit Z, was constructed by above-named firm from drawings made and furnished by James W. Campbell, of the firm of Campbell & Ferguson. Said machine or device was commenced in the last week in August, 1874, and was finished and delivered to said Campbell & Ferguson on the first day of October, 1874.

Philadelphia, March 3d, 1881.

CHARLES HOWSON, Esq.,
For Complainants.
JOHN WALKER SHORTLIDGE, Esq.,
For Respondents.

(Here follows diagram, marked p. 124.)

125 Respondents' offer of patent No. 8448, Oct. 21. 1851, marked Respondents' Exhibit P, objected to by complainants' counsel for want of notice in the answer.

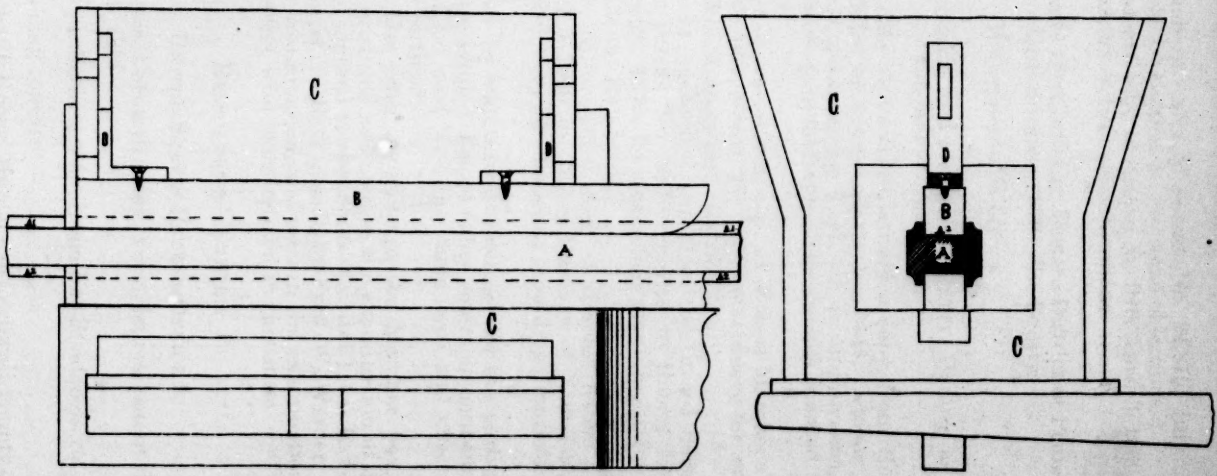
Respondents' offer of reissue No. 674, March 15, 1859, marked Respondents' Exhibit Q, objected to for the same reason, and for the further reason that it is incompetent and immaterial.

No. 201.
Cantrell et al
vs.
Wallick
} p. 124.

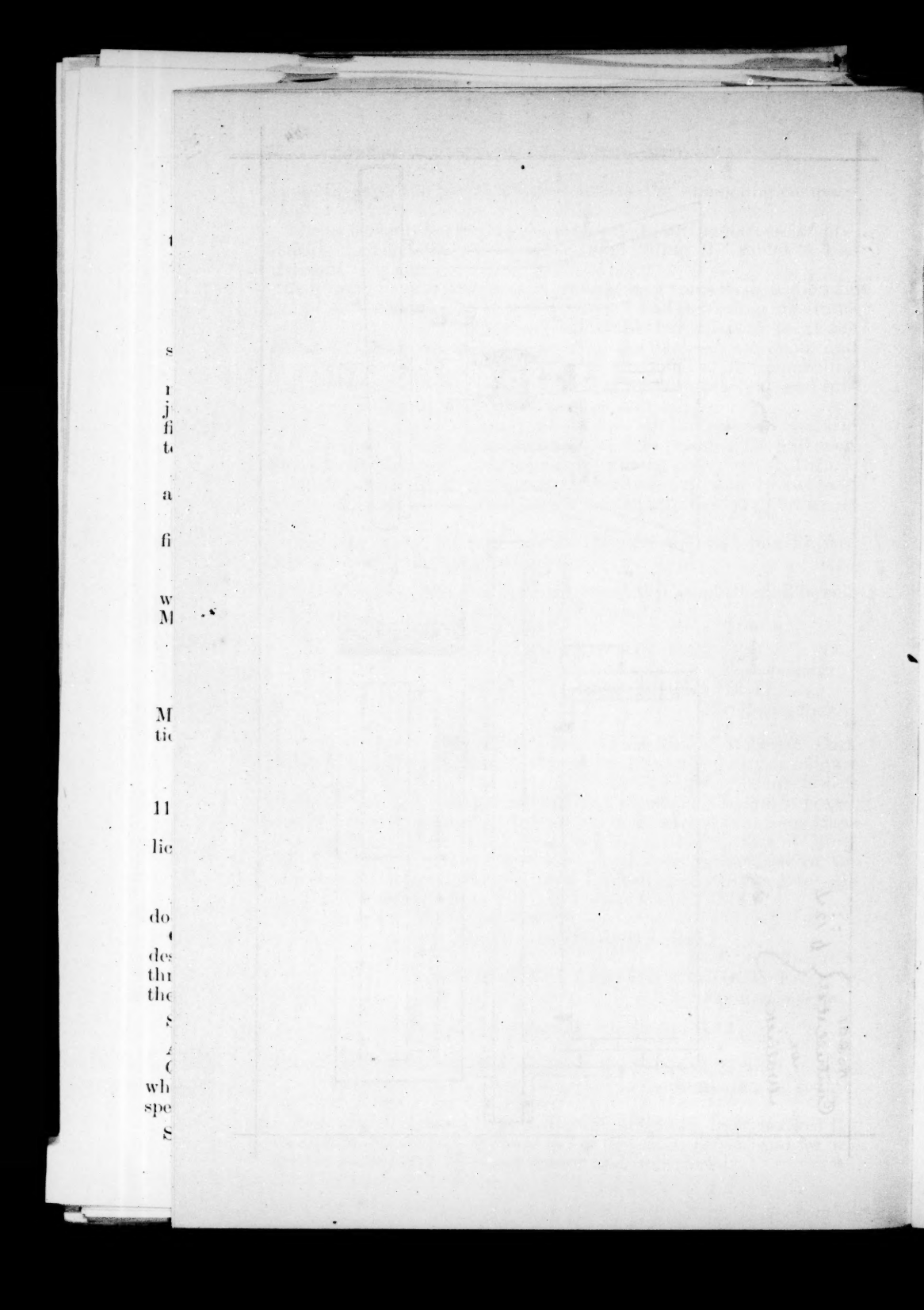
Fig 1

EXHIBIT 2.

Fig 2.



124



To the respondents' offer of patent No. 24,879, July 26, 1859, marked Respondents' Exhibit R, the same objections.

To the respondents' offer of reissue No. 940, April 3, 1860, marked Respondents' Exhibit S, the same objections.

126 United States Circuit Court, Eastern District of Pennsylvania. April Sessions 1879. In Equity.

WASHINGTON WALLICK
vs.
EDWARD J. CANTRELL and HENRY B. PETTY, trading as Cantrell & Petty. } No. 39.

Respondents offer in evidence an office copy, from the United States Patent Office, of letters patent No. 8448, October 21, 1851, Robert Marcher, Cornwall, New York, for an improvement in machinery for enameling mouldings. The same is marked Respondents' Exhibit P.

Also, an office or uncertified copy of Robert Marcher's reissued letters patent No. 674, March 15, 1859, machinery for enameling mouldings, marked Respondents' Exhibit Q.

Also, an office or uncertified copy from the United States Patent Office of letters patent No. 24879, granted to Robert Marcher, of New York, July 26, 1859, for enameling mouldings; the same is marked Respondents' Exhibit R.

Also, an office or uncertified copy of reissued letters patent No. 940, dated April 3, 1860, to Robert Marcher, of New York, for improvement in machinery for enameling mouldings, marked Respondents' Exhibit S.

It is stipulated by and between counsel for the parties to this cause that the uncertified Patent Office copies hereinbefore offered in evidence shall be used with the same force and effect as if the same were duly certified.

Respondents also offer in evidence the Marcher box, with the wooden blocks, produced and used in the examination of Frederick W. Werner, and marked Respondents' Exhibit I, (A. R. G.)

Also, Diagram H (A. R. G.), made by Fred. W. Werner, produced and used in his examination, and used in the examination of various other witnessess, who have testified in this cause.

127 RESPONDENTS' EXHIBIT P.

UNITED STATES PATENT OFEICE.

ROBERT MARCHER, Cornwall, New York, letters patent No. 8448, dated Oct. 21, 1851.

Imp't in Machinery for Enameling Mouldings, etc.

To all whom it may concern:

Be it known that I, Robert Marcher, of Cornwall, county of Orange, and State of New York, have invented a new and useful improvement in machinery or apparatus for applying enamel to mouldings

and other like articles of wood; and I do hereby declare that the following is a full, clear, and exact description of the same, reference being made to the annexed drawings, making a part of this specification, in which—

Figure 1 is a perspective view.

Figure 2, a transverse section, and similar letters refer to similar parts throughout.

My invention relates to machinery for applying the composition upon the surface of wood mouldings in the process of preparing them for gilding, as well as for the purpose of making a finished enameled surface upon all materials capable of being treated in this manner.

The construction and operation is as follows: A represents a trough made of a length equal to the length of the mouldings to be enameled. On the top edge of one side a groove (*a*) is cut to receive the guide piece attached to the bottom side of the conveyor, at (*a'*) to keep it in place as it slides along the top of the trough. The conveyor is seen at B and is a frame or box composed of metal or other suitable material. The top and bottom are open. The two ends are also cut away half or two-thirds the distance from the bottom, so as to leave ample room for the passage of the largest
128 piece of moulding through the bottom of the conveyor. The bottom edges of the two sides terminate in flanges (*b*), which rest upon the trough A. Within the conveyor there is a box of nearly the same length as the conveyor, but narrower at the sides; the top and bottom are open, and it is capable of being raised or lowered, and also moved to the one side or the other, as may be required. (*c*) are screws tapped into the sides of the conveyor, the ends of which act against the sides of the box C, and on being screwed hard against it set it firmly in any position placed within the range of said screws. The two sides of this box are generally of unequal width, one being deeper than the other, and made to suit different-sized mouldings, so that there are various boxes for the purpose. The bottom edges of the two sides terminate in flanges (*d*). One of these flanges slides along the bottom of the rebate on the inner edge of the moulding, and the other at the outer edge, as shown. At D are two plates of sufficient width to fit in the ends of the conveyor; these slide down between the ends of the box C and the end of B, there being space enough for the purpose, and so as to make at the same time a close fit. The lower edges of these plates are cut out so as to fit the outline of the upper side of the moulding, as clearly represented. These plates are adjusted so as to press or scrape their moulded edges lightly along the surface of the moulding, and this is effected by the screws (*e*) combined with the ears (*g*) and conveyor, as clearly represented.

F represents a piece of moulding fixed in the trough in the proper position to be acted upon by the passage of the conveyor over it. To hold it firmly in one position a clamp is applied attached to the bottom of the trough at each end. One of these clamps should be adjustable, so as to be readily attached. The one exhibited in the drawings is of peculiar construction, and is made as follows: (*i i*) are two

pieces forming a dovetail or groove on the bottom of the trough. A forked piece (*k*) is fitted to slide freely in the groove. The inside
129 of the fork is beveled, as shown in the drawing. A wedge (*l*) is inserted in the fork and hinged near the head. A point (*m*) is fixed on the end, being sharp, so as to be easily driven into the end wood of the moulding. To set the piece of moulding in its place raise the wedge (*l*) by its handle, then drive the point (*m*) into F by sliding the fork (*k*) along in the dovetail groove (*i*). As soon as the point is driven in far enough to hold, press (*l*) down into the fork (*k*), which will spring the ends of the fork open and cause them to be pressed against the sides of the groove and firmly wedged within it, so as to be immovable, and thereby hold the moulding in place.

The operation is as follows: The moulding to be enameled being fitted in the trough A, as described, the conveyor is moved along to one end, the plates D set down by the screws (*e*) so as to press lightly upon the moulding. A quantity of plaster or other material intended for the formation of the enamel having been previously prepared, by reducing it to a semi-fluid consistence, proper to be spread upon the surface, is poured into the box C. The plates D and the sides of the box *c* fit the inequalities of the moulding so closely that none can run out, and it therefore forms a sort of sliding bottom to the box, and the composition consequently flows over and covers so much of the moulding as is contained within the box. The conveyor is now made to slide along the trough and consequently passes over every portion of the moulding, which, as it comes within the box, receives a coat of the composition. In preparing mouldings for gilding it is necessary that this enamel should have sufficient thickness to fill all the inequalities in the grain of the wood and form a smooth and finished surface. It is therefore requisite to apply several coats. This is done by passing the conveyor back and forth until the requisite quantity has been applied. The plates D act as a scraper or leveler, and the thickness of each coat is regulated by rais-
130 ing the moulded edge of that plate which follows, in whichever direction the conveyor is moving; hence the quantity which is left upon the moulding as the conveyor passes over is regulated by the width of the opening thus made and, the edge also of the plate acts as a leveler or smoother, leaving a finished surface of the exact form of the moulding as cut on the lower edge of the plates.

There are some modifications of this machine which may be made and certain parts substituted for others. Thus, instead of the box C, formed in one piece, two plates formed like the sides of C may be substituted. When such plates are used the points of the screws (*e*), instead of merely pressing against the sides, as at present, should be connected to them by passing through and holding by a pin and washer or like contrivance on the inside, so that while setting up the plates, a shoulder turned on near the point would take the pressure, and on unscrewing, the plates would be drawn back by the washer and pin on the inside.

The particular use of the flanges (*d*) is to hold up the moulding

to the requisite position with reference to the plates, in order to constitute it the bottom of the reservoir.

At each end of the moulding there may be placed a cup to receive any composition which may be driven before the conveyor in its passage back and forth.

What I claim as of my own invention is the arrangement of the conveyor constructed so as to form, in connection with the moulding or the article to be enameled, a reservoir to contain the composition, said moulding forming, as it were, a sliding bottom to the reservoir, by which means the composition is spread upon its surface, as set forth.

I claim also the clamp for fastening and releasing the end of the article to be enameled, the whole being constructed and operating substantially in the manner and for the purpose described herein.

ROBT. MARCHER.

Witnesses:

S. H. MAYNARD.
JOHN W. KILSBY, Jr.

Exd. C. F. L. J.

131 RESPONDENTS' EXHIBIT Q.

UNITED STATES PATENT OFFICE.

ROBERT MARCHER of New York, New York. Reissued letters patent No. 674, dated Mar. 15, 1859.

Mach. for Enameling Mouldings, etc.

To all whom it may concern:

Be it known that I, Robert Marcher, late of Cornwall, county of Orange and State of New York, now of the city of New York, have invented a new and useful improvement in machinery or apparatus for applying enamel to mouldings and other like articles of wood; and I do hereby declare that the following is a full, clear, and exact description of the same, reference being had to the accompanying drawings making a part of this specification, in which—

Figure 1 is a perspective view.

Figure 2 is a transverse section, and similar letters refer to similar parts throughout.

My invention relates to machinery for applying the composition to the surface of wood mouldings in the process of preparing them for gilding, as well as for the purpose of making a finished enameled surface upon all materials capable of being treated in this manner.

The construction and operation is as follows: (A) represents a table or bench of a length sufficient to receive the mouldings or other articles to be enameled, the said bench being provided with two parallel ways (*a a*), the upper surface of one being formed with a groove (*a'*) to receive and guide a tongue (*a''*) attached to the apparatus for laying the composition. This apparatus, represented at

(B), is a carriage for carrying the composition, such as is used
132 for enameling, having the top and bottom open and the two ends cut out to a sufficient extent to receive the largest mouldings which may be required to be enameled. The lower part of the sides terminate in flanches (*b b*) which rest on the ways (*a a*), one of them having the guide piece (*a''*) projecting from its under face.

Within this carriage there is a box or hopper (C) of nearly the same length as the inside, but narrower, and with the top and bottom open. It can be raised or lowered and moved to one side or the other, as may be required, by means of screws (*c c c c*) tapped into the sides of the carriage, the ends of which gripe the sides, so that by turning these screws the said box or hopper can be liberated for adjustment and then firmly held in position. The two sides of this hopper are generally of unequal width, one being deeper than the other, and there should be several of them to suit different sized mouldings. The bottom edges of the two sides terminate in flanches (*d*) extending below the moulding, one under the rebate and the other under the inner edge of the moulding, as represented. There are two plates (D D') of sufficient width to fit in the ends of the carriage so as to slide up and down freely, but yet making a close fit between the ends of the box (C) and the end of the carriage (B). The lower edge of these plates is of a form the reverse of the moulding to be coated or enameled, as represented, there being one set of such plates for each kind of moulding. These plates are adjustible towards and from the surface of the moulding by means of set-screws (*e e e e*) tapped into the ends of the carriage, and formed with collars to embrace ears (*g g g g*) projecting from the upper ends of the plates.

(F) represents a piece of moulding secured in place above the table (A) by means of suitable dogs. At one end the dogs may be permanent, but at the other it should be adjustable and may be con-
133 structed as exhibited in the drawings. Two pieces (*i i*) are attached to the top of the table, forming a dovetail groove between them, to which is fitted a sliding piece (*k*) forked at its rear end. The dog (*m*) is attached to this sliding piece (*k*) and its forward end is suitably formed to hold the moulding when driven into it. After the moulding has been driven against the stationary dog at the other end, the dog (*m*) is driven in and held firmly in place by a wedge (*l*), which is forced down between the forks of the slide (*k*), which are thereby forced outward against the sides of the dovetail groove to hold the dog firmly in place.

The operation is as follows: The moulding to be enameled being secured in place and the carriage brought to one end, the plates (D D') are set down by the screws (*e*) so as to press lightly upon the moulding, while the carriage rests on the ways (*a a*), there being sufficient space left between the flanches (*d d*) and the under part of the moulding to allow for the intended thickness of the enamel to be put down the upper or moulding surface. The composition to be applied is put in the box or hopper (C) in a semi-fluid condition, which is prevented from running out at bottom by the surface of the moulding, at the sides by the sides of the hopper (C), and at the

front end by the plate (D′), which simply forms one end of the hopper, that being its sole function. And the material is also prevented from escaping at the front end by the plate (D′), which, while the carriage is at rest, acts as one end of the hopper (C). The carriage is then moved forward to the other end of the moulding, and as the surface of the moulding constitutes the bottom of the hopper the semi-liquid material coats in succession every part of the surface. The lower edge of the plate (D), which before starting was set in contact with the surface of the moulding when in motion, determines the thickness of the coat of enamel to be left on the surface of the moulding. As the carriage with all its appendages is simply held down by gravity, and the lower edge of the plate (D) simply rests on the surface of the moulding by gravity, and as there is sufficient play left between the under surface of the moulding and the flanches (*d d*) of the hopper, the whole is permitted to rise as the edge of the plate (D) meets with the resistance presented by the adhesion of the coating of enamel on the surface of the moulding, and this it is that determines the thickness of the coating left. The passage of the edge of the plate (D) not only equalizes the thickness of the coating, but smooths the surface, and as it rests on the surface by gravity alone it is self-adapting to accom-odate itself to any irregularity in the surface of the moulding, longitudinal or transverse, as it is moved from end to end. To fill up all the pores of the wood and to obtain a smooth surface suitable for gilding or for other purposes it is necessary to apply several coats of the composition, which is done by repeating the operation; but if the flanches (*d d*) are employed, and in setting the hopper (C) or the moulding sufficient space is not left between these flanches and the under face of the moulds to give the amount of play required for the ultimate thickness of the enamel, then care should be taken to reset the plates (D D′) at the end of each movement, if required, so that their lower edges shall just touch the surface when the carriage rests on its ways. It may be well to add that the thickness of each coat of enamel will depend upon several things, viz: The consistency of the composition, which, however, should not be varied much, the thickness of the lower edge of the plates (D D′), and the weight or pressure of the carriage relatively to the width of the mouldings, so that the operative in moving the carriage may at pleasure increase the pressure with his hand, or the carriage may be made heavier.

There are some modifications of this machine which may be suggested and certain parts substituted for others. Thus, instead of the box (C) formed in one piece, two plates formed like the sides of (C) may be substituted. When such plates are used the points of the screws (*c*), instead of merely pressing against the sides, as at present, should be connected to them by passing through and holding by a pin and washer or like contrivance on the inside, so that while setting up the plates a shoulder turned on near the point would take the pressure, and, on unscrewing, the plates would be drawn back by the washer and pins on the inside.

It will be obvious from the foregoing that the sole purpose of the box or hopper is to apply the composition to the surface to be enam-

eled, and that the object of having two plates (D D') instead of only one is to admit of using the hopper as a means of applying the composition to the surface to be enameled.

And it will also be obvious that the sole purpose of the ways is to hold the apparatus when at rest, and when adjusting the parts, and to relieve the edges of the moulding from the duty of guiding the carriage longitudinally. And although the best results will be attained by the employment of all the parts in connection, as above described, I do not wish to be understood as limiting my claim to such use in connection, as some parts of my said invention may be used to advantage without others.

Nor do I wish to be undertood as limiting my claim to the modes of construction specifically described and suggested, as other modes of construction involving the principle or mode of operation which I have invented may be adopted. I do not wish to be understood as claiming broadly the use of a scraper formed to fit the moulding to be enameled.

What I claim as my invention, and desire to secure by letters patent, in coating or enameling the surface of mouldings, is the employment of a plate whose lower edge is formed the reverse of the transverse form of the moulding to which it is applied, when such plate is made self-adapting to the surface of the moulding during the longitudinal movement, substantially as herein described and for the purpose set forth.

I also claim the employment of a hopper to contain the composition for enameling when the lower edges of the end plates thereof are formed the reverse of the transverse form of the moulding, and the moulding to be enameled is employed as the bottom of such hopper, substantially as described and for the purpose set forth.

ROBT. MARCHER.

Witnesses:
PETER VAN ANTWERP.
THOS. VAN ANTWERP.

Ex'd C. F., L. J.

136 RESPONDENTS' EXHIBIT R.

UNITED STATES PATENT OFFICE.

ROBERT MARCHER, of New York, N. Y., Letters Patent No. 24879, dated July 26, 1859.

Enameling Mouldings.

To all whom it may concern:

Be it known that I, Robert Marcher, of the city, county, and State of New York, have invented a new and useful improvement in machinery for enameling mouldings; and I do hereby declare that the following is a full, clear, and exact description of the same, reference being had to the annexed drawings, making a part of this specification, in which—

Figure 1 is a longitudinal vertical section of my invention taken in the line *x x*, figure 3.

Figure 2, a transverse vertical section of ditto, taken in the line *y y*, figure 3.

Figure 3, a plan or top view of ditto.

Figure 4, a transverse section of the vibrating bed and dog taken in the line *z z*, figure 3, and showing one form of feeding device that may be used.

Similar letters of reference indicate corresponding parts in the several figures.

This invention relates to an improvement on a machine for enameling mouldings, for which letters patent and a reissue thereof were granted to me, respectively bearing date October 21st, 1851, and March 15th, 1859. The within-described invention consists in an improvement in the hopper which contains the necessary composition for enameling, whereby the hopper is rendered capable of expanding and contracting to compensate for the inequalities
137 of the moulding. The invention further consists in the adaptation of feeding devices, as hereafter shown and described, which permit of the employment or use of any power as a motor.

To enable those skilled in the art to freely use, understand, and construct my invention I will proceed to describe it.

A represents a framing, which may be of rectangular form, and constructed in any proper manner to support the working parts. On the upper part of the framing A and at its back end a hopper, B, is placed, which contains the usual composition, C, that is applied to the moulding. This hopper, B, is formed of five parts, to wit: two yielding sides, *a a*, two end pieces, *b b′*, and a bottom, *c*. The bottom *c* is provided with two ledges, *c′ c′*, between which the moulding D passes, and the end pieces *b b′* have each a recess made in them corresponding inversely with a transverse form of the moulding, so as to allow the latter to pass through the hopper. The end piece *b* serves merely as a guide, but the outermost end piece *b′* serves as a scraper to regulate the supply of composition on the moulding, and give the same its proper form and finish as the moulding passes through the hopper. The end piece *b′* may be adjusted at any desired height by set screws. The moulding D, when the machine is in use, forms, strictly speaking, the bottom of the hopper, and the composition C resets upon it, as shown clearly in figure 2. The end pieces *b b′* are arranged substantially like those in the patented machine previously alluded to, and, therefore, do not require a more minute description. The side piece- *a a*, however, are of novel construction, and are each formed of two parts, *a′ a″*; connected by a joint, *d*, the lower end of the parts *a′* being attached by joints *e* to blocks *f*, which are attached to framing by screws, *g*. To each block *f* an upright, *h*, is attached, and in each upright a screw, *i*, is fitted, the ends of said screws bearing against the parts *a′*. See
138 Figures 2 and 3. The standards *h* may be made yielding instead of stiff, as represented in the drawing, so asto exert a slight lateral pressure on the parts or side pieces *a a*, and thus avoid any rigid contact between the parts and the articles being operated

upon. The lower edges of the parts *a'* of the side pieces *a* are grooved longitudinally, and fit on the upper and lower corner of the moulding, as shown clearly in figure 2, said parts acting in connection with end piece *b'* as keepers to retain the moulding in proper position as it passes through the hopper.

From the above description it will be seen that as the moulding D passes through the hopper B the sides *a a* will yield or give and thereby conform to any irregularities of surface which the moulding may have. This will be fully understood by referring to figure 2.

In the upper part of the framing A a reciprocating bed, E, is placed, and allowed to slide freely back and forth. This bed E has its reciprocating movement given it by means of a connecting rod, F, which is attached to a crank wheel, G, that is secured to one end of a horizontal shaft, H, at the front end of the framing A. This shaft H has two level wheels, I I, placed on it, said wheels gearing into corresponding wheels, J J, which are placed on the lower end of the vertical shafts K K, on the upper parts of which feed rollers L L' are placed, to the lower ends of which two other wheels, M M', are attached. The wheels M M' gear into corresponding wheels N N' on the upper part of the framing, and these wheels N N' gear into wheels O O', which are attached to the lower part of feed rollers P P'. This system of wheels is shown clearly in figure 3.

The feed rollers L' P' and connecting wheel N' with their respective shafts, are connected with a lateraly sliding bed, Q, at the front part of the framing, and the lower end of the shaft K' of the roller L' is stepped in a bar which is attached to the bed Q. By this arrangement the feed rollers L' P' are allowed to yield or
139 give, and springs *f* are attached to the bed in order to keep said rollers L' P' to their work.

To the framing A, and directly in line with the space between the feed rollers, a bearing plate or block, R, is placed. This plate or block is attached to a suitable support and its lower end is made of such a form as to correspond inversely with the transverse form of the moulding D.

To the upper surface of the bed E a dog, S, is attached by a pivot, *k*, the dog being allowed to work freely on its pivot. The bearing edge of this dog is designated by *l*, and the dog has a horizontal projecting plate, *m*, attached, which projects beyond a fence, *n*, on the bed E. To the upper part of the framing A, at one side, two vertical adjustable plates, *o o*, are attached by screws *p p*, and to the opposite side a spring-catch, *q*, is attached, as shown clearly in figure 3.

The operation is as follows: Power is applied to the wheel G in any proposed way, and a rotary motion is communicated to the feed rollers L L', P P', by the gearing described, and a reciprocating movement is communicated to the bed E by the connecting rod F. The moulding D is fed along by the feed rollers underneath the bearing plate R, and between the dog S and fence *n*, and if heavy or large mouldings are to be enameled the rollers L L', P P', serve merely to feed the moulding to the dog S, which serves to feed the moulding during its progress through the hopper B. The dog S gripes the moulding D during the forward movement of the bed E,

and feeds it along through the hopper, the dog being released at the termination of the forward movement of the bed E by the plate *o*. At the termination of the backward movement of the bed E the dog S is slightly actuated by the plate *o'*, but not sufficiently to cause the dog to gripe the moulding D, the remaining movement being given the dog by the spring catch *g*, which effects the result just after the commencement of the forward movement of bed
140 E. By this arrangement no retrograde movement is allowed the moulding D, a contingency which would be liable to occur if the dog S were actuated by the plate *o'*, for the dog would necessarily gripe the moulding a little before the termination of the backward movement of the bed, and the work of enameling would be marred to a certain extent by such a result.

In enameling light mouldings the feed may be given by the rollers L L', P P', for the power required is not great and the rollers would be competent to do the work; but in enameling heavy mouldings the rollers would be inefficient when used alone. They would, however, in the latter case be valuable to feed the moulding to the dog S, and thereby save considerable labor.

I do not claim broadly a hopper, B, through which the moulding D passes, for this has been used and was formerly patented by me, as previously alluded to; neither do I claim the feed movements as herein described, when separately considered, for they have been previously used, but—

I do claim as new and desire to secure by letters patent—

1st. The elastic or yielding sides *a a* of the hopper B, arranged to operate substantially as and for the purpose set forth.

2d. In combination with the hopper B, the reciprocating dog S, attached to the bed E and operated as shown, and also in combination with said hopper the feed rollers L L', P P', either or both feeding devices being employed, for the purpose specified.

ROBT. MARCHER.

Witnesses:
WM. TUSCH.
S. H. WALES.

Ex'd: C. F., L. J.

141 RESPONDENTS' EXHIBIT S.

UNITED STATES PATENT OFFICE.

ROBERT MARCHER, of New York, N. Y. Reissue Letters Patent No. 940. Dated April 3, 1860.

Imp't on Machines for Enameling Mouldings.

To all whom it may concern:

Be it known that I, Robert Marcher, of the city, county, and State of New York, have invented certain new and useful improvements in machinery for enameling mouldings; and I do hereby declare that the following is a full, clear, and exact description thereof, reference being had to the accompanying drawings, making part of

this specification, in which figure 1 is a plan of the machine, figure 2 a longitudinal vertical section taken at the line A *a* of figure 1, figure 3 a cross vertical section taken at the line B *b* of figure 1, and figure 4 a cross section taken at the line C *c* of figure 1.

The same letters indicate like parts in all the figures.

The mode of enameling mouldings formerly practiced was by laying the composition on the surface of the wooden moulding with a brush, and then rubbing it down with pumice stone, and on the 21st day of October, 1851, letters patent were granted to me for an improved method which has since been extensively used. This improved method so patented by me consists of a hopper to contain the composition for enameling. The end pieces of the said hopper have their lower edges shaped to correspond with the transverse form of the moulding, which said moulding, during the operation, constitutes the bottom of the hopper, the
142 sides of the said hopper being made to fit sufficiently close to the sides of the moulding to prevent the free escape of the composition. This machine, or rather this tool, with the composition in it, is moved by hand back and forth, over the surface of the moulding, and as the mass of composition in the hopper rests on the moulding, each operation lays on a given thickness, the surplus being removed by one of the end pieces, which also rubs down the coating to give the required form, and finally the finish or required smoothness is given by either one or both of the said end pieces.

And, although this, in practice, has been found to be a valuable improvement in the art of enameling mouldings, nevertheless, like all tools, the working of it requires skill and labor.

The object of my present invention is to substitute an organized mechanism for the skill and labor of a workman.

And in view of the objects to be obtained my said invention consists in combining with a plate, one edge of which is formed to fit the surface of the moulding to be enameled, and with a bed or guage, or its equivalent, to sustain the moulding during its movements in its proper relation to such plate, a feeding mechanism to move the moulding and cause it to pass under the edge of the said plate to strike off the surplus composition and to smooth down the surface of the enamel which remains on.

And my said invention also consists in combining with the plate, the lower edge of which is fitted to the transverse form of the moulding under the combination first named, the employment of side plates, the edges of which bear against the moulding to prevent the escape of the composition laterally.

And my said invention also consists in combing with the elements above enumerated—that is to say, with the mechanism by
143 which the moulding is propelled, the plate, the lower edge of which is formed the reverse of the moulding, the guage which maintains the moulding in its proper relations, and with the side plates each side of the moulding, or with the equivalents of them—the employment of a second plate having its lower edge formed the reverse in form of the moulding, and placed at the opposite end of the side plates, that the two said end plates and the

side plates may constitute a hopper to contain the semi-fluid composition, that it may rest on the moulding, which during the operation constitutes the bottom of the said hopper.

And my said invention also consists in making each of the said end plates and each of the said side plates self-adapting to inequalities when combined with the gauge and with the mechanism for propelling the moulding, or the equivalents of them.

In the accompanying drawings A represents a suitable frame and (B) a hopper composed of four parts, viz., two end plates (*b b'*) and two side plates (*c c*). The end plates (*b b'*) are either secured by screws or other equivalent means to standards (*d d'*), or adapted to slide on such standards and held down by their weight, springs, or equivalents therefor. Their lower edges are to be of a form the reverse of the transverse form of the moulding to be enameled. The sides of the hopper are formed each of two plates (*c c*), placed at right angles to the end plates (*b b'*) and equal in length to the space between them, so as to work accurately but freely between the said end plates. I prefer to make the sides of the hopper each of two plates (*c c'*), hinged together at their upper edges; and the lower edge of the outer plate (*c'*) is hinged to a plate (d^2) secured to the bed plate or bench of the machine by screws, or other equivalent means, which will admit of adjustment for mouldings of different widths, unless the machine is made to enamel mouldings of only one width. The lower edge of the inner plates (*c c*), which form the sides of
144 the hopper, I prefer to rebate slightly to straddle or ride on the edges of the mouldings, to which they are held by a yielding pressure, that they may be self-adapting to any slight variation in the thickness or width of the moulding. The yielding pressure is applied by screws (*e e*), which bear against the outer plates (*c' c'*), and which are tapped into spring standards (*f f*) attached to the plates (d^2 d^2) secured to the bed or frame.

Below the hopper thus formed there is a gauge plate or rest, which I prefer to make in two parts (*j j*) each with a ledge or flanch to embrace the sides of the moulding. These two parts are secured to the bed or bench of the machine by screws or other equivalent means to admit of setting them nearer to or farther from each other, that a moulding of the required width may pass between the edges or flanches, which act as lateral guides. The upper surface of the moulding in passing under the hopper (B), and resting on the gauge below, forms the bottom of the hopper, and hence for adjustment to mouldings of different thicknesses either the hopper must be adjustable relatively to the gauge (*j j*), or *vice versa*.

The mouldings to be enameled are in succession placed on the bench of the machine and presented to and moved forward by two pairs of vertical feed rollers (*k k' l l'*), which gripe the edges thereof. The shafts of the two rollers *k' and l'* turn in fixed bearings, and the one (*l'*) receives motion from the main shaft (*m*) by bevel wheels (*n n*) or other suitable gearings, and imparts a corresponding motion to the other roller (*k*) by a cog-wheel (*q'*) on its shaft, which engages an intermediate wheel (*p*), which in turn engages another wheel (*o'*) on the shaft of the roller (*k'*); but other suitable gearing may be substi-

tuted. The other two rollers (*k*) and (*l*) are geared in like manner, and the one (*l*) in like manner receives motion from the main shaft. But these two rollers (*k l*) are mounted in a frame or carriage (*r*) adapted to slide in the frame at right angles to the line of motion of the moulding, and by means of springs (S) or other equivalent means are forced towards the rollers *k'* and *l'* that the two pairs of rollers may gripe the mouldings with sufficient force to give the required feeding motion.

If the machine be intended for operating on mouldings which vary materially in width the shaft of the roller (*l*) may be provided with a universal joint, or other equivalent means to admit of the required play, so that the carriage (*r*) with the rollers *k l* can move towards or from the rollers *k' l'*.

The strips of mouldings are to be placed one by one and in succession on the bench and introduced between the feed rollers (*k k'*) (*l l'*), by which they are griped and propelled by a regular motion towards the hopper, and before the rear end of one strip leaves the bight of the first pair of rollers the next strip should be introduced that the ends of the two may be in contact in passing under the hopper.

Beyond the feed rollers there is an adjustable block (R), to hold down the moulding as it is moved forward by the rollers or equivalent feed motion. As the moulding is moved along towards the hopper it is guided by a fence (*a*), which is simply a straight edge secured to the frame, and, if desired, a like straight edge may be used on the other side, and which may be either fixed or movable, and forced against the edge of the mouldings by springs or weights, as in machines for planing.

As the moulding progresses it passes under the hopper, and during the operation becomes the bottom thereof, and for this reason the enameling composition should not be applied until a moulding has been introduced to form the bottom of the hopper, so that such composition shall rest on and apply itself to the surface to be enameled, the surplus being struck off to a determined gauge by the lower edge of the end plate (*b'*), which also performs the office of rubbing down the enamel as the moulding moves under it. The sides of the hopper not only hold the enameling composition on the moulding in sufficient quantities to insure good work, but at the same time if desired may give a proper finish to the edges of the moulding. The sole purpose of the end plates (*b*) is to prevent the enameling composition from running out when the moulding is at rest or when a large quantity is put in the hopper at once; but if the moulding be moved at a good velocity, and the quantity of composition is not too large, the end plate (*b*) may be dispensed with, as the motion of the moulding will carry the composition towards and cause it to pile up, as it were, against the other end plate (*b'*). And even the side plates may be dispensed with if the composition be applied in very moderate quantities, but the best results will be obtained if the entire hopper be used.

A portion of the inner part of the side plates (*c c*) of the hopper

near to the end plates (b') may be cut away if desired, to allow the enameling to coat the edges of the moulding.

It will be obvious that if the machine be made to enamel mouldings which are accurately planed of uniform thickness and width that the side pieces of the hopper may be fixed, and that the end pieces of the said hopper may be set and fixed for each successive operation, care being taken to readjust the parts for each successive coat, but I prefer to make these parts self-adapting.

Other and equivalent modes of moving the mouldings may be substituted; and one of the modes which I have contemplated is by a longitudinal reciprocating carriage (E) receiving motion by a crank (E') and connecting-rod (F). This carriage is adapted to slide in suitable ways in the main frame. One side of this carriage has a flanch or ledge (u), against which one edge of the moulding is griped by a cam-like lever (T) which vibrates on a fulcrum-pin (t) on the carriage. The inner end of this griping lever is curved or cam-like, so that when it is placed in the diagonal position represented by dotted lines the moulding will not be griped, and hence the carriage can move back without carrying back the moulding.

And this griping lever is thrown into this position towards
147 the end of the forward motion of the carriage by striking against a stop (u) of the frame. On the return motion of the carriage this griping lever strikes another stop (v) at the other end, which throws it nearly into the position represented by full lines; but as the operation of the gripe-lever to gripe the moulding would of necessity cause the moulding to be griped a little before the completing of the back motion of the carriage, which would result in giving a slight back moulding, which is to be avoided, I employ this simply to get the griping lever in a position to be operated to complete the gripe by the beginning of the forward motion. This is effected by an arm (w) attached to and projecting beyond the end of the griping lever. As the griping lever strikes the stop (v) towards the end of the back motion of the carriage, the arm (w) is forced by the bevel end of a spring dog (x), and so soon as the carriage begins to move forward the arm (w) strikes the lip of the spring dog, which turns the griping lever into the position represented by full lines, thereby causing it to gripe the moulding against the flanch or ledge (u) of the carriage with such force as to feed it along, and, as the arm cannot be vibrated beyond this, it forces back the spring dog and escapes from it. For the convenience of adjusting the arm (w) to the spring dog the arm is made with side wings to embrace the sides of the griping lever and slide on it, and the bolt by which the two are connected passes through elongated slots, which admit of the required adjustment.

What I claim as my invention, and desire to secure by letters patent, is the combination of the mechanism, or the equivalent thereof, for propelling the moulding with the plate, the lower edge of which is formed the reverse of the moulding to strike off the surplus enameling and to rub it down, and with the bed or gauge which sustains the mouldings in its proper relations to the said plate, substantially as and for the purpose specified.

I also claim, in combination with the combination above claimed, the employment of the side plates at the sides of the moulding, substantially as and for the purpose specified.

And I also claim, in combination with the parts enumerated as claimed in combination in the second of the above claims, the employment of the other of the plates specified as having its lower edge of the reverse form of the moulding, substantially as and for the purpose specified.

And, finally, I claim making each of the said end plates and each of the said side plates, or all of them, self-adapting by yielding pressure, substantially as described, when combined with the mechanism, or its equivalent, for feeding the moulding, and with the bed or gauge, substantially as and for the purpose specified.

ROBERT MARCHER.

Witnesses:
PETER VAN ANTWERP.
GEORGE BEST.

Ex.: J. A. W., M. McK.

148 And afterwards, to wit, on the 25th day of April, A. D. 1882, this cause came on for argument on pleadings and proofs and was argued by counsel for the respective parties. The court held the same under advisement.

And afterwards, to wit, on the 3rd day of May, A. D. 1882, the court filed the following opinion by Hon. William Butler, judge:

C. C. U. S., E. D. of Pa. April Sess., 1879.

WALLICK
vs.
CANTRELL & PETTY. } No. 39.

BUTLER, Judge:

A very few lines will explain our views of this case.

Letters patent No. 163,825, for an "improvement in apparatus for enamelling mouldings," were issued to the plaintiff May 25, 1875, containing a single claim, as follows: "An enamelling box divided into two compartments by a slotted partition, and having openings at the end in a line with the slot in the partition, all substantially as and for the purpose set forth."

149 The bill charges infringement of this patent. The defences set up and urged at the hearing were, first, that the patent is invalid, and, second, that the defendants have not infringed. The first was based principally on an allegation of prior use. As respects this it is sufficient to say that, in our judgment, the allegation is not sustained. A written review of the testimony would be of no value. A careful examination has satisfied us that its weight is against the defendants, while the burden of proof is on them.

The suggested objection to the claim is unfounded. The claim embraces nothing that should not have been included. It covers simply the peculiar enamelling box invented and constructed by the plaintiff and shown by the model.

That the defendants' device infringes the plaintiff's we cannot doubt. It was designed for the same purpose and accomplished it in the same way and substantially by the same means. The mechanical appliances are virtually undistinguishable, and the mode of operation and the result are identical. Without the expert testimony, which is very positive, this conclusion is fully sustained by inspection of the two boxes and their work.

A decree must be entered accordingly.

150 (Endorsed:) No. 39. April sess., 1879. C. C. U. S., E. D. of Pa. Wallick *vs.* Cantrell & Petty. Opinion. Filed May 3, 1882.

151 And afterwards, to wit, on the 5th day of May, A. D. 1882, the court entered the following decree, to wit:

Circuit Court of the United States, Eastern District of Pennsylvania.
April, 1879. In Equity.

WASHINGTON WALLICK
vs.
CANTRELL and PETTY. } No. 39.

Present: Hon. W. Butler, judge.

And now, May 5th, 1882, this cause having come on to be heard upon bill, answer, replication, and proofs, and having been argued by counsel, it is ordered and decreed by this court that the complainant's letters patent in the bill of complaint described are good and valid in law. That the said complainant, Washington Wallick, was the first and original and true inventor of the invention described in said letters patent and the specifications annexed thereto, and is the exclusive owner of said patent, and that the said defendants herein have infringed upon the said patent, and upon the exclusive

152 rights of the said complainant under the same, by the use of apparatus for enamelling substantially the same in construction and operation as in said letters patent mentioned, as charged in said bill of complaint.

And it is further ordered, adjudged, and decreed that a perpetual injunction issue from this court enjoining and restraining said defendants from making, using, or vending any apparatus for enamelling mouldings embodying and containing the said patented improvement or any substantial and material part thereof in said complainant's said letters patent mentioned.

And it is further ordered, adjudged, and decreed that the said complainant do recover of the defendants the profits, gains, and advantages which the said defendants have received or made or which have arisen or accrued to them from their said infringement of said patent, and also the damages which the said complainant has suffered from said infringement.

And it is further ordered, adjudged, and decreed that the said complainant do recover of the defendants his costs and charges and disbursements in this suit to be taxed.

153 And it is further ordered, adjudged, and decreed that it be referred to William R. Claxton, Esq., as master, to ascertain and take and state and report to the court the gains, profits, and advantages which the said defendants have received, or which have arisen or accrued to them from their said infringement of said letters patent, and also the damages suffered by said complainant from and by reason of said infringements.

And it is further ordered, adjudged, and decreed that the complainant, in such accounting, have the right to cause an examination of the said defendants *ore tenus* or otherwise, and also the production of books, vouchers, and documents before said master from time to time, as said master shall direct.

(Endorsed:) No. 39. April sess., 1879. C. C. U. S., E. D. of Pa. Wallick *vs.* Cantrell *et al.* Decree. Entered & filed May 5, 1882.

154 And afterwards, to wit, on the 15th day of September, A. D. 1882, come the complainant and respondents into our said court here and file the following agreement, to wit:

United States Circuit Court, Eastern District of Penna. April Sess., 1879. In Equity.

WASHINGTON WALLICK
vs.
EDWARD J. CANTRELL and HENRY B. PETTY, trading as Cantrell and Petty. } No. 39.

It is hereby agreed that a decree for two hundred dollars damages, exclusive of costs, shall be entered in plaintiff's favor in the above-stated case, thereby avoiding the trouble, delay, and expense incident to an inquiry into that question before a master.

It is, however, understood that this agreement in nowise interferes with defendants' right of appeal.

EDW. J. CANTRELL.
HENRY B. PETTY.
CANTRELL & PETTY,
WASHINGTON WALLICK.

155 (Endorsed:) U. S. C. C., E. D. of Penna. April, 1879. No. 39. Wallick *vs.* Cantrell *et al.* Agreement for a decree. Filed September 15, 1882.

156 And on the day and year last aforesaid the court entered the following decree, to wit:

U. S. C. C., E. D. of Pa. April, 1879.

WALLICK
vs.
CANTRELL *et al.* } No. 39.

And now, this fifteenth day of September, A. D. 1882, this cause having come on to be heard, and the agreement of the parties hav-

ing been filed, it is ordered, adjudged, and decreed, and this court, by virtue of the power and authority therein vested, doth order, adjudge, and decree that the said defendants pay to the said complainant the sum of two hundred dollars.

And it is further ordered, adjudged, and decreed that the said defendants pay to the said complainant his costs in this suit.

And now, to wit, Sept. 14, 1882, I hereby assent to the entry of the above decree.

JOHN WALKER SHORTLIDGE,
For Cantrell & Petty.

157 (Endorsed:) 39. April sess., 1879. U. S. C. C., E. D. of Pa. Wallick *vs.* Cantrell. Decree. Entered & filed September 15, 1882. Howson, for complainant.

158 And afterwards, to wit, on the 5th day of October, A. D. 1882, the respondents, by their solicitor, came into our said court here and file a præcipe for an appeal, which being read is as follows, to wit:

Circuit Court of the United States, Eastern District of Pennsylvania.
April Session, 1879. In Equity.

WASHINGTON WALLICK
v.
CANTRELL *et al.* } No. 39.

The above defendants, Edward J. Cantrell and Henry B. Petty, trading as Cantrell and Petty, considering themselves aggrieved by the final decree entered in the above-stated case, do hereby appeal therefrom to the Supreme Court of the United States; and they pray that a transcript of the record and proceedings, evidence, and exhibits in the case, duly authenticated, may be sent to the said Supreme Court.

JOHN WALKER SHORTLIDGE,
Sol. for Def'ts.

Phila., Oct., 1882.

159 (Endorsed:) Circuit Court U. S. April session, 1879. No. 39. In equity. Wallick *vs.* Cantrell *et al.* Præcipe for appeal. Filed October 5, 1882. John Walker Shortlidge, for def'ts.

160 And on the day and year last aforesaid the court entered the following order, to wit:

April Sess., 1879.

WALLICK
vs.
CANTRELL *et al.* } No. 39.

And now, wit, this 5th day of October, A. D. 1882, John Walker Shortlidge, Esq., counsel for respondents, appearing in open court, prays an appeal to the Supreme Court of the United States

from the decree of this court, and the same is allowed with security, fixed in the sum of five hundred dollars ($500).

161 In the Circuit Court of the United States, in and for the Eastern District of Pennsylvania, in the Third Circuit. April Sess., 1879. In Equity.

WASHINGTON WALLICK
vs.
EDWARD J. CANTRELL and HENRY B. PETTY, trading as Cantrell & Petty. } No. 39.

Know all men by these presents, that we, Edward J. Cantrell and Henry B. Petty, trading as Cantrell and Petty, as principals, and Christopher Cusack, of 17th and Market streets, all of the city of Philadelphia and State of Pennsylvania, are held and firmly bound unto the above-named Washington Wallick, of the city of Philadelphia and State of Pennsylvania, in the sum of five hundred dollars, to be paid to the said Washington Wallick, of the city of Philadelphia, State of Pennsylvania, his certain attorney, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our respective heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this ninth day of October, A. D. 1882.

Whereas lately, at a circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, in a suit depending in the said court between Washington Wallick and Edward J. Cantrell and Henry B. Petty, trading as Cantrell and Petty, a final decree was rendered against the said Cantrell and Petty, trading, &c.; and the said Edward J. Cantrell and Henry B. Petty, trading, &c., having taken an appeal, which appeal has been allowed by the said circuit court to the Supreme Court of the United States to reverse the said decree in the aforesaid suit:

162 Now the condition of this obligation is such that if the said Edward J. Cantrell and Henry B. Petty, trading as Cantrell and Petty, shall prosecute their said appeal to effect, and answer all damages and costs if they shall fail to make their appeal good, then this obligation to be null and void, otherwise to remain in full force and virtue.

EDW. J. CANTRELL. [L. S.]
HENRY B. PETTY. [SEAL.]
CHRISTOPHER CUSACK. [SEAL.]

Sealed and delivered in the presence of—
SAMUEL BELL.

Approved: W. McKENNAN,
Cir. Judge,

[Endorsed:] E. D. Penna. No. 39. April sess., 1879. Circuit court, United States. Washington Wallick *vs.* Cantrell *et al.* Bond sur appeal. Filed October 12, 1882.

163 THE UNITED STATES OF AMERICA, *ss:*

To Washington Wallick, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit, wherein Edward J. Cantrell and Henry B. Petty, trading as Cantrell and Petty, are appellants, and you are appellee, to show cause, if any there be, why the decree rendered against said appellants, as in said appeal mentioned, shall not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness my hand this twelfth day of October, in the year of our Lord one thousand eight hundred and eighty two.

W. McKENNAN,
Cir. Judge.

Service admitted.

CHARLES HOWSON,
Def'dts' Sol'r.

164 UNITED STATES OF AMERICA, } *ss:*
Eastern District of Pennsylvania, }

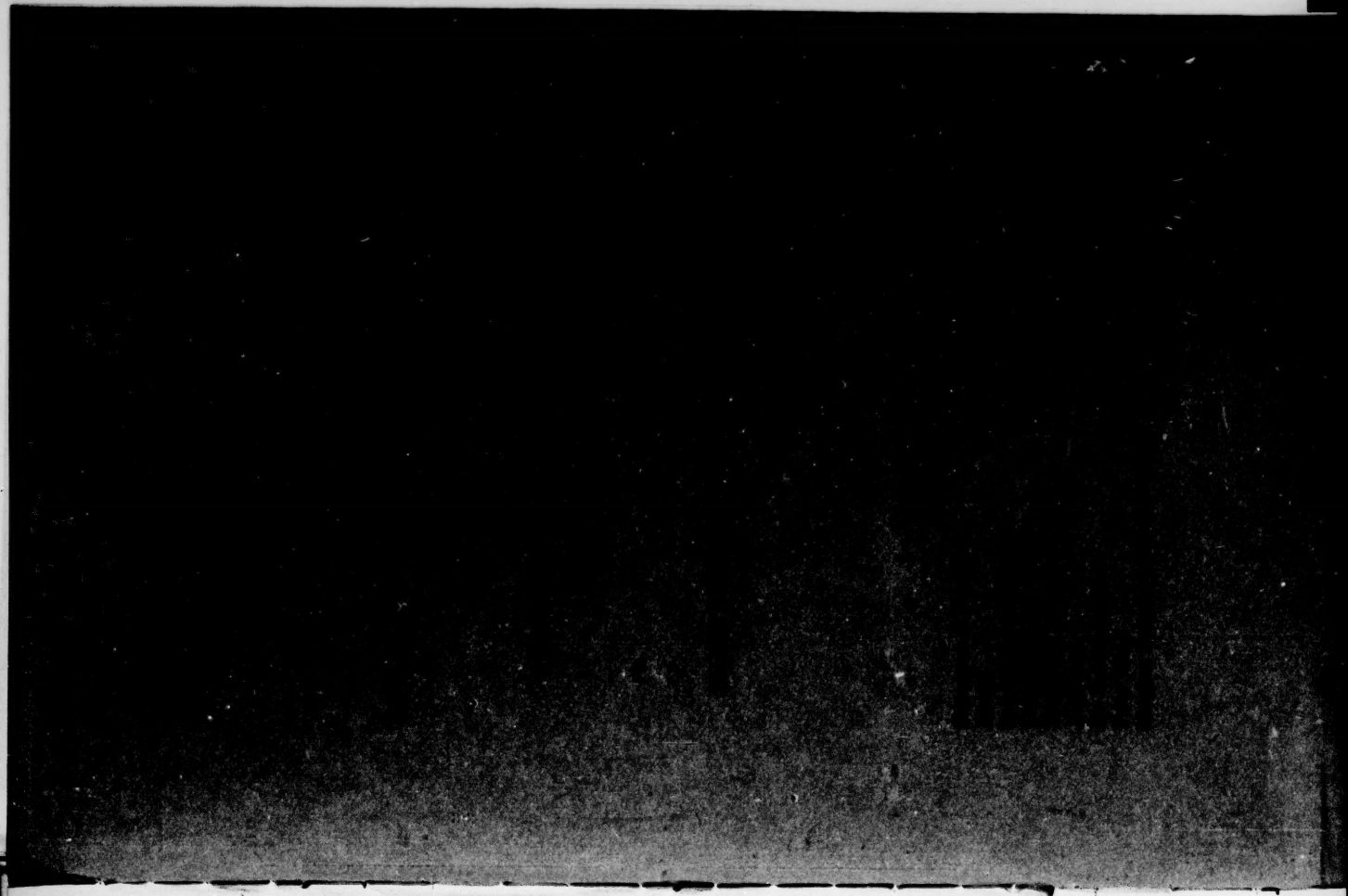
I, Samuel Bell, clerk of the circuit court of the United States of America for the eastern district of Pennsylvania, in the third circuit, do hereby certify the foregoing to be a true and faithful copy of the original record and proceedings in the case of Washington Wallick *vs.* Edward J. Cantrell and Henry B. Petty, trading as Cantrell and Petty, on file, and now remaining among the records of the said court in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said court at Philadelphia, this tenth day of January, in the year of our Lord one thousand eight hundred and eighty-three, and of the Independence of these United States the one hundred and seventh.

[Seal U. S. Circuit Court, E. D. Pennsylvania. E Pluribus Unum.]

SAMUEL BELL,
Clerk of C. C.

Endorsed on cover: E. Pennsylvania. C. C. U. S. No. 201. Edward J. Cantrell & Henry B. Petty, trading as Cantrell & Petty, appellants, *vs.* Washington Wallick. Filed 9th March, 1883.



Supreme Court of the United States

October Term, 1885. No. 201.

APPEAL OF

EDWARD J. CANTRELL AND HENRY B. PETTY,

Trading as CANTRELL & PETTY,

From a Final Decree of

THE UNITED STATES CIRCUIT COURT,

Eastern District of Pennsylvania.

BRIEF OF ARGUMENT FOR APPELLANTS.

JOHN WALKER SHORTLIDGE,
Counsel for Appellants.

Supreme Court of the United States.

OCTOBER TERM, 1885. No. 201.

EDWARD J CANTRELL
AND
HENRY B. PETTY
Trading as Cantrell & Petty,
Appellants.
vs.
WASHINGTON WALLICK,
Appellee.

Appeal from the
Circuit Court of the United States,
For the Eastern District
of Pennsylvania.

IN EQUITY.

Statement of the Case.

The appellee filed his bill in the Court below May 13, 1879, charging appellants with infringement of his Letters Patent No. 163,825 dated May 25, 1875, for an alleged "Improvement in apparatus for enameling mouldings." (Record p. 1.)

The appellees were served, appeared, and filed their answer. (Record p. 4.)

Replication was filed July 23, 1879.(Record p. 6.)

On April 8th, 1880, an amendment to answer was filed by agreement. (Record p. 7.)

Testimony was taken on both sides and the cause was heard by Butler, J. sitting as the Circuit Court for the Eastern District of Pennsylvania, April 25, 1882, who filed his

opinion May 3, 1882, awarding a decree for an injunction and an account. (Record p. 91.)

On Sept. 25, 1882. an agreement by the parties was filed, for a decree in accordance with the opinion of the Court, without prejudice to Respondent's right of appeal. (Record p. 93.)

On Oct. 12, 1882, the Respondents perfected their appeal to this Court. (Record p. 95.)

The issues raised by the pleadings are:

1. Was the respondents machine an infringement upon the Letters Patent of Complainant?

2. Was the alleged invention of Complainant anticipated by prior use?

3. Was there patentable novelty in the alleged invention of Complainant?

4. Is Complainants specification sufficient, or is it "too large" by reason of embracing old inventions without disclaiming?

ASSIGNMENTS OF ERROR.

The learned Court below erred.

1. In adjudging that "the Defendants device infringes the Plaintiffs."

2. In holding "that the mechanical appliances are virtually undistinguishable and the mode of operation and the results are identical."

3. The learned Court erred in adjudging "that the allegation of prior use is not sustained," by the evidence.

4. In adjudging that Complainants Patent No 163,825 of May 25, 1875, is valid.

5. The learned Court below erred in awarding an injunction against Respondents, and a decree for an account.

6. The learned Court below erred in not dismissing the bill of Complainant. (See opinion, Record p. 91.)

FIRST AND SECOND ASSIGNMENTS OF ERROR.

The evidence in support of the alleged infringement, aside from the averment of the Complainant and which is denied under oath by the Respondents, is the testimony of an expert. The value of expert testimony can generally be determined by its intrinsic evidence and the qualification of the witness. Thus this person's answers to cross-questions 8, 20, 22, 24, 25, 26, 27 and 28, together with his shuffling and evasive answers throughout, disclose the value that should be accorded to his testimony—as follows:

X Q 8. What is your knowledge of boxes or devices for enameling mouldings, and where did you acquire that information.

A. I have no practical knowledge derived from experience in enameling mouldings, but I believe I clearly understand the nature of the process, and the requirements of an apparatus for effecting it. (Record p. 11.)

X Q 20. Are you familiar with the patents that have been granted for doing this work?

A. I am not, excepting the Complainant's patent. (Record p. 12.)

X Q 22. Have you explained how it was done prior to that time, meaning the time that Complainant's patent was granted?

A. I have already said that I was not practically familiar with the enameling of mouldings, but that I understood the nature of the process and of the devices used in a general way. (Record p. 12.)

Question repeated.

A. I did not intend to give more than a general description of the process as I understand it is done at present. (Record p. 12.)

X Q 24. In response to X Q 19 did you intend to describe, or did you describe, the Complainants method of enameling moulding, or the methods in common use prior to the use of his device?

A. I meant to describe in a general way the process of enameling, and my answer to X Q 19, will apply to both. (Record p. 12.)

X Q 25. Did you get your knowledge of enameling mouldings from the description embraced in Complainant's specification?

A. Principally from that; though I had previous knowledge of methods of coating or enameling wood or other substances in somewhat similar manner. (Record p. 12.)

X Q 26. Where did you derive your knowledge or information of enameling wood or other substances, in a somewhat similar manner?

A. From reading and observation, as there are many operations partaking of the nature of coating wood or other material with plastic or liquid substances. (Record p. 12)

X Q 27. What did you read, and what did you observe in relation to enameling mouldings?

A. I cannot cite you the books, or particular instances. (Record p. 12.)

X Q 28. Can you give me one single instance, or one single reference to any publication, or one single source aside from Complainant's specification, from which you derived any information relating to the art of enameling mouldings?

A. I think the process will be found described in several of the mechanical dictionaries, but I do not name any one in particular. (Record p. 12.)

It is conceded that in some cases a *competent expert* can give a valuable opinion on the question of infringement without a knowledge of the art and of what is novel, but in this

case some such knowledge is necessary. Besides here the alleged expert and the Complainant differ as to what his supposed invention is.

See examination of Kite (Record p 15).

X Q 54. Question repeated, as to whether the claim is for a combination.

A. The slotted partition appears to be a new feature, and the claim is for the arrangement and construction of the enameling box in which this can be used in conjunction with parts previously used in enameling, and therefore the claim may be said to be for a combination of old and new features. (Record p. 15).

X Q 55. Is not the bar or partition the new feature?

A. The form of the end plates, or their openings for the purpose described is new. (Record p 15).

Wallick the Complainant in his cross-examination says: (Record p. 54).

X Q 2. Was the Box you used late in the fall of 1872 especially made for the purpose?

A. It was a Marcher Box altered especially for the purpose. (Record p. 54).

X Q 3. Explain what were the alterations?

A By placing the bar in the Box to fill the rabbit of the mouldings and prevent the whiting from flowing in. (Record p. 54).

X Q 4. What if any change was made in the bottom and ends of the box?

A. We made no change at that time in the bottom, but changed the ends so that they would fit in the rabbit as part of the bar or guide in the Box. This was in the year 1872 or early part of 1873. (Record p. 54.)

This witness examined in chief says:

Q 36. Do you claim as part of your improvement the

iron or steel end plates cut the reverse of the mouldings designed to be enameled?

A. I make no separate claim on the end plate. An iron end plate with an opening cut the reverse of the moulding intended to be enameled was in use in our establishment before I made my improvement. (Record p. 51.)

Also see answer to Q 15.

A. I worked with the Box from the time I commenced in 1873 until I applied for a patent. (Record p. 49.)

Q 16. What time in 1873.

A. I think it was from July to January. (Record p. 49.)

Q 17. What improvement did you make on it after you first set it up?

A. There was no material improvement after we first set it up. (Record p. 49.)

It thus appears the alleged invention was what he calls a slotted partition, or bar, or stick of wood the thickness of the rabbit of a moulding, and a sufficient length to wedge between the ends of the Marcher Box. See Resp. exhibits Nos. 1, 2 and 3. (Record p. 47.) Also the original Box upon which Wallick obtained his patent.

There is testimony in this case by mechanical experts, who seem to know whereof they speak, and who also appear to feel under obligation to speak to the point, in answering questions.

F. W. Werner, a mechanical expert of 25 years experience, familiar with the art of enameling mouldings, and the state of the art, and a practical operator, testifies as follows:

Q 3. Are you familiar with the various inventions and improved machinery used for this purpose?

A. Yes. (Record p. 60.)

Q 7. Are you familiar with the patents or inventions of R. Marcher, for the purpose of enameling mouldings?

A. Yes. (Record p. 60.)

Witness offered as an expert in appliances for enameling mouldings. (Record p. 62.)

Witness is shown model marked Complainant's Exhibit C.

Q 27. In what respect does that Box differ in principle from the Marcher Box as shown in drawing marked "Enameling Machine, Patented Oct. 21, 1851, No. 8,448?"

A. In principle it is the same. This Box having side compartments in addition to the Marcher Box. The plates for the purpose of keeping the enamel out of the rabbits are substantially the same as the side plates shown in drawing No. 8,448, without the flanges. (Record p. 62.)

Witness is shown two side plates marked Respondent's Exhibit K.

Q 28. Are not these the plates shown in No. 8,448, and are they not part of Model marked Exhibit C?

A. They are. (Record p. 63.)

Q 29. Did or did not Marcher use plates with and without flanges?

A. He did, and they are used to-day in the Marcher Machines. (Record p. 63.)

Q 30. In the Box marked Exhibit C. what kind of plates are used?

A. Plates without the flanges. (Record p. 63.)

Q 31. Could you use plates with the flanges in making that moulding and in adjusting that Box as it is there; particularly if you were enameling mouldings of a larger size?

A. I have always used the plates with flanges in working the larger sizes. (Record p. 63.)

Q 41. Is there any substantial difference between the side plates shown in Diagram H. (A. R. G.) and the plates marked Exhibit K., and the plates marked C. C. in Diagram

8,448, Fig. 2, R. Marcher and the side plates in Exhibit C. screwed to the sides of the two boxes, or are they in principle identical or equivalent?

A. In principle they are identical. (Record p. 64.)

Q 39. Mr. Wallick claims as his invention, "an enameling box divided into two compartments by a slotted partition and having openings at the ends in a line with the slot in the partition." Has he made those openings that he designates "in a line with the partition," and which in point of fact are holes cut in the end plates the reverse of the shape of the moulding designed to be enameled, in anywise different from the end plates heretofore in use since Robert Marcher's invention, and which he describes in his specification for reissue, No. 940, dated April 3, 1860, as follows: "The end plates of the said hopper have their lower edges cut to correspond with the transverse form of the moulding," and which he further describes as part of his claim in his said specification?

A. It must of necessity be the same. (Record p. 64.)

X Q 28. In the Marcher Box are not the openings which are cut the reverse to fit the mouldings to be enameled, always cut in the edges of the plates?

A. Not always, it depends on the shape of the moulding. (Record p. 67.)

X Q 29. The particular openings in the end plates of Box Exhibit I are formed so as to correspond with the blocks of wood which form the partition, so that the moulding may be properly enameled without allowing the whiting to get into rabbits. Is not that so?

A. No, sir. The openings are made to fit the moulding without any reference to the pieces. The pieces are more particularly for a guide. If the opening the reverse of the moulding, in the end plates is properly cut, it will keep all the enamel out of the rabbit, merely allowing it to become stained. (Record p. 67.)

X Q 30. If the pieces of wood referred to are so much smaller than the rabbit of the moulding as to allow some of the whiting to flow into the rabbit, will not a moulding enameled on such a machine be defective?

A. No, sir. If the piece of wood fills the rabbit too closely or too tight, it will leave a ragged sharp edge to the moulding. It wears out the plate and forms a bead under the rabbit of the moulding. (Record p. 67.)

John G. Hoyer, an expert in the mechanical art of enameling mouldings, and a practical operator of 12 years experience, testifies as follows:

Q 3. Are you familiar with the appliances, the patents, and the state of the art of enameling mouldings?

A. I am. (Record p. 69.)

Q 4. Are you familiar with the Marcher Patents?

A. I am. (Record p. 69.)

Q 9. Are you familiar with Wallick's Patent, No. 163,825?

Yes, sir. (Record p. 69.)

Q 10. Explain the alteration that Wallick made in the Marcher Box and upon which he claims a patent?

A. The only difference that I see is the bar—this piece of wood, Respondent's Exhibit, No. 3. I mean the piece of wood with sheet iron on the sides. (Record p. 69–70.)

Q 15. Would it be possible to enamel a piece of moulding without having an iron or steel end plate cut the reverse of the moulding intended to be enameled, and to fit it accurately.

No, sir. It has always to fit it exactly. (Record p. 70.)

Q 22. If the end plate called the bit or scraper is made properly to fit the moulding intended to be enameled, will it keep the enamel out of the rabbit without a bar, or any thing to take the place of the bar?

A. Yes, sir. (Record p. 71)

X Q 28. I now call your attention to Q. 22 and your answer thereto, and ask you to explain how the enamel would be kept out of the rabbit without a bar, or any thing to take the place of the bar?

A. If you make the scraper fit the rabbit exactly, it keeps the whiting out. (Record p. 74–5.)

X Q 29. If you pass a double-rabbit moulding through an enameling box containing enameling composition sufficient to properly enamel the moulding, but without a bar or anything to take place of the bar, what is there to prevent the composition from getting into the rabbit?

A. The scraper. (Record p. 75.)

X Q 30. Will you explain how under such circumstances the scraper will keep the enamel out of the rabbit?

A. I did explain to you before. The scraper has to fit the rabbit exactly, and then it keeps the whiting out. (Record p. 75.)

Q 21. What is the principal use of the bar that Wallick uses to fill the top rabbit as shown in Complainant's Exhibit B?

A. For the purpose of a guide. (Record p. 71.)

Q 23. Is the bar necessary to keep the enamel out of the rabbit of the moulding?

A. It is not necessary. (Record p. 71.)

X Q 22. In passing a strip of moulding through such a box as you do use, do not the end plates guide the strips of moulding?

A. They do not. (Record p. 74.)

X Q 23. What does guide the strips?

A. Outside there are iron wheels which feed and guide the moulding, in connection with the *inside guides which are the flanges.* (Record p. 74.)

From the foregoing testimony it is apparent that the alleged improvement of Complainant is the bar *alone*, and but

one question is presented under the 1st and 2d assignment of error—Are the guide plates of Respondent's machine an infringement of the bar of the Complainant's.

First, the plates are shown by the above testimony to be parts of the Marcher Box, or mechanical equivalents thereof, and second, that the alleged infringement is merely one of many ways of adjusting an old machine, so that it incidentally performs the work of Complainant's without the use of Complainant's improvement, and therefore its utility establishes the fact that it operates differently and is not an infringement.

This superiority is sufficiently indicated by the answers of Kite to X 39, (Rec. p. 14.) X 59, (Rec. p. 16.) X 72, (Rec. p. 18.) X 74, (Rec. p. 19.) X 80, (Rec. p. 19.) X 82, (Rec. p. 20.)

Werner testified as to construction of Respondent's Box.

Q 42. As I understand you the only addition which you have made to the Box known as the Marcher Box, is to unite two of them so as to make a double Box, so to speak, and which being adjustable enables you to work any sized moulding in common use.

A. That is so. (Record p. 64.

Q 43. Is the Box marked Exhibit I a perfect Marcher Box or is it constructed of different parts of different boxes, and does that account for the difference in the side plates and flanges?

A. It is a perfect Marcher Box. The plates are intended to be and were the same, but I cut off the flange of one of them to adapt it to other work. (Record p. 95.)

X Q 8. Then you do not find in the Box 8,448 the central partition referred to in Wallick's patent?

A. No, it is not there, Wallick's is not intended for making that kind of mouldings. (Record p. 65.)

No advantage is claimed by Wallick from fastening sheet iron to the sides of his bar.

See Wallick's examination.

Q 37. Why did you put these plates of iron upon the bar? Referring to Respondent's Exhibit No. 3.

A. The principal object was to make it cheap as an experiment. (Record p. 51.)

Q 38. Would it then have answered your purpose just as well, to have made the bar of steel, iron, or wood?

A. Wood would not have answered on account of wear, it would have cut it down. Iron or steel would have answered. (Record p. 51.)

Therefore the question is simply this, do these inside plates infringe upon the bar. This question is settled by inspection. In addition to the occular demonstration presented by the respective models of these machines, it is to be observed, the general principle or foundation upon which inventors operate, is to accomplish the largest amount of labor with the smallest amount of physical force, and the simplest auxiliaries. Thus, the objective point of inventors of moulding machinery, would be adaptability and adjustability, so that the greatest variety of this product, both with regard to size and form, could be produced with the greatest facility, and with the most perfect results. The defendants have both sworn, that they became the owners by purchase of the Complainant's apparatus, and found it unfit and inadequate for their work; that they threw it aside as practically worthless, and at great expense obtained the alleged infringement. They also say that the latter machine is adjustable, and competent to enamel mouldings of dimensions not exceeding four inches.

It will therefore perform all that can be accomplished on the Marcher Patents, and much more than all that can be done on the Wallick Box, and in a much superior manner. The superior quality of its work as compared with Wallick's

device, arises from the more philosophical principles upon which it is designed and constructed. While Wallick's Box will only take one or two sizes of the same outline, (for as soon as there is a departure from the form with the groove cut in the top, the bar must be removed, and then it is no longer Wallick's device) the Respondent's being both movable and adjustable, will take any size of any form in ordinary use.

Again, an immense advantage arises from the use of the thin steel side-plates, the elasticity of which, enables them to accommodate any defect in quality or unevenness in the wood or grain of the moulding, thus imparting to the completed work a higher and finer finish, and requiring less power to force it through, and altogether avoiding the locking or wedging of the moulding, by reason of the inflexible or unyielding nature of a solid bar of wood or iron, let into a rabbet or groove cut through the top of the moulding, as it is driven through the box. The importance of this objection to the bar can be partially estimated by the fact that Wallick says he worked two years to overcome the friction in thiswise produced, (See Record, answer to 1, cross-question p. 54), and Werner encountered the same obstacle, (See Record p. 63–4.)

In view of these results, it could hardly be successfully maintained, that the flexible or elastic side plates, (even had they not been used by Marcher) are the equivalents of the inflexible bar; which will accumulate resistance from the slightest obstruction, or even from the substance of the enamel itself, sufficient to lock the machinery. "A mechanical equiv-"alent as generally understood, is when the one may be "adopted instead of the other, by a person skilled in the art." Johnson v Root, 1 Fisher's Patent Cases 363. In support of the foregoing reasoning it may not be inappropriate to cite the observations of the Court in Johnson v Root ibid 362, where Sprague J. says: "There is another species of evidence that

"has been introduced and relied upon, that is, the results of "the two machines, when you come to compare them; this "may sometimes aid you in determining whether they are "substantially the same. Now if one machine, which is al- "leged to be an infringement of another, produces a different "result, or in other words is of greater utility than the pre- "ceding machine, it may be some evidence of a difference, a "substantial difference between them. And the utility of the "one over the other may be so great, as to be satisfactory evi- "dence that some new principle is involved, and that it is not "substantially the same."

Again in Eames v Cook, 2 Fisher's Patent Cases 146. "If the mechanism employed by the patentee is materially "different from that used by a prior inventor, and especially "if it be of such increased utility, as to have wholly super- "ceded the prior machine, it is no answer to a claim for a "patent, to say, that after all the boot was as well treed by "the prior machine as by that of the patentee."

Also in case of Parker v. Styles 5 McLean 63. "There "may be different modes," says the Court, "of accomplishing "the same object. If after a patent has been obtained for a "particular thing, another person, without borrowing from "that patent, has invented a new mode of accomplishing the "same thing, he would be entitled to a patent, and would not "infringe the rights of the previous patentee."

The flexible or elastic side-plates and the solid bar, so far from being equivalent, and performing the same work in substantially the same manner, act upon directly opposite principles.

The spring of the plates in the case of inequality of the grooves or wood of the moulding, enable them to adjust themselves to the change immediately; while the rigid bar, or partition as it is called, would under similar circumstances lock the machinery or produce an accident. The bar would in this case act on the principle of the wedge, while the plates by

approximating each other sufficient to compensate for the inequality would act on the principle of the safety valve; the one would be the secondary cause of the trouble, the other would cause the machine to overcome it; the one would be driven through by irregular physical force, if the resistance is not so great as to disorganize the machine, while the other would continue to exert a constant automatic lateral pressure by grasping the edges of the moulding in a firm yet pliable hand, acting as a keeper and guide, and regulating the machinery as it operates.

It will be observed that this was the principle object of Marcher in his patent of July 26, 1859, No. 24,879, when he jointed his Box, so as to make it adjustable by automatic pressure, (See Record 85–6).

In addition to the differences here-in-before explained between the bar and the elastic side-plates based upon the opposite principles upon which the two devices operate, there is still another difficulty induced by the peculiar structure of the bar Mr. Wallick has adopted.

It has been observed that he has constructed it of a stick of wood the proper length, and nailed or screwed sheet-iron to the sides, as he says "to make it cheap." Being composed principally of wood, it absorbs moisture from the enameling composition and in consequence of the absorption swells; thus increasing the difficulties heretofore suggested, that are inherent in the nature of this contrivance. The fact that no single objection to the use of one of these ideas, is equally or at all common to both, together with the radical differences in principle and effect already pointed out, amounts to conclusive evidence that they are not mechanical equivalents and do not perform the same work in substantially the same manner.

Third, Fifth and Sixth Assignments of Error.

It is shown by the evidence that the supposed invention of Mr. Wallick the Complainant, and for which he obtained his patent, No. 163,825, was anticipated by Mr. Werner, who put the same device in actual use in 1866, and continued the same in practical operation in his business for a period of four years. That it was then sold and continued in use by others.

See examination of F. W. Werner. (Record p 60).

Q 9. When did you first see a box for the purpose of enameling mouldings like, or substantially like the model marked Complainant's Exhibit B?

A. Well I got up one in 1866 like this Exhibit B, except there was a slight difference in the under part or bottom. (Record p 60).

Diagram H, (A. R. G.) See Record at p 60, shown witness.

Q 10. Is this a diagram of the Box you constructed in 1866?

A. It is. (Record p 60).

Q 14. Did you use a bar to fill the rabbet made of wood or iron, or both?

A. I first used wood, afterwards iron. (Record p. 61).

Q 20. Did you make any Boxes from 1866 to 1875 of any kind: if so when, and describe how they were constructed?

A. I made two Boxes like the 1866 machine shown in diagram H. They were both made in 1870. I made them for myself. (Record p. 61).

X Q 9. What became of the Box which you say you made in 1866.

A. The Box made in 1866 was put on one of the machines made in 1870, we made a new frame and a new feeding apparatus, and used the old Box. (Record p 65).

X Q 10. Had you been using the 1886 Box steadily or regularly up to that time?

A. Yes, regularly pretty much every day up to that time. (Record p. 66).

X Q 11. Then what became of it?

A. Sold it to T. C. Ladd & Co. I sold it to them in the winter of 1873 or spring of 1874, and it was not used by Mr. Ladd until sometime after I sold it to him. I myself had not used it between 1871 and 1874, because I was out of business. (Record p 66).

X Q 12. Was the Box you sold to T. C. Ladd & Co. identically the same Box that you made in 1866?

A. It was the identical Box, no part had been substituted or changed after 1866. (Record p 66).

This testimony is not contradicted by a single witness. On the other hand it is indirectly confirmed by those called to rebut it.

See examination of T. C Ladd. (Record p. 32)

Q 2. When you went into business, what machinery did you have?

A. Werner's. One that we purchased from F. W. Werner. (Record p. 32)

Q 3. Did this machine which you purchased from Mr. Werner have a central partition in the enameling Box?

A. No, it did not. (Record p. 32)

Q 8. What, if you know, became of this enameling machine which you purchased from Mr. Werner?

A. I took it from the factory and put it on storage. I do not recollect with whom. I dont know what became of it since then. (Record p. 33).

X Q 9. Mr. Ladd, you have said the Box which you purchased from Mr. Werner had no central partition. Did it have a wood or iron bar fitting exactly between the ends, for the purpose of filling the rabbet of a moulding, when it

was desirable to enamel a moulding of that form, that is to say, with a rabbet through the top or upper side?

A. It had a movable bar of iron for that purpose. (Record p 33).

X Q 12. Would you recognize a diagram of the machine you purchased from Mr. Wetner in 1874, and which you say you afterwards took out of the mill and placed on storage and which you say you have lost all knowledge of?

A. Yes. (Record p 33).

Diagram H (A. R. G.) shown witness, and he asked:

X Q 13. Do you recognize that as a drawing of the Box or machine that you purchased from Mr. Werner, or not?

A. I recognize it as a correct drawing of the machine. (Record p 33).

X Q 14. Please state whether or not the vertical sections marked A, (W. T. F.) shows the iron bar you mentioned, as fitting between the ends of the machine, and held in place by the angle irons marked B (W. T. F.)?

A. I understand perfectly what it represents, and it is the bar about which you inquire. (Record p 33).

R E Q 15. When you used the machine purchased from Werner, did you or not dispense with the bar referred to in answer to cross-question 9?

A. We did not dispense with it; we used it. (Record p 34).

Robert Warren in his cross-examination, referring to the machines used by Ladd & Co. says:

X Q 64. Is your recollection of the machine which you mentioned as the new machine, sufficiently clear to recognize it, if it was placed before you?

A. In some points, yes. (Record p 31).

X Q 65. Was it like the model now shown you?

A. It was something like it. (Record p 31).

The model shown witness is marked "Complainant's Exhibit B." (Record p 31).

This is about as positive as anything this witness said, and it is to be observed *en passant* that the model "Complainant's Exhibit B," is Complainant's Box, and substantially the same as the Box Werner said he constructed in 1866, and sold to T. C. Ladd & Co. in 1873.

Charles Tollner, another of Complainant's rebutting witnesses, says in his examination in response to the lead of Complainant's Counsel:

Q 2. If you have ever been in the moulding business yourself, please state when and where?

A. I have been in the moulding business; I think it was in 1873 or 1874, 90 and 92 Fulton St. (Record p 39).

Q 4. What, if any, enameling machine did you have when you first went into the business?

A. We had what they call a chain machine; call it a chain feed machine. (Record p 39).

Q 5. Where did you get it?

A. Of F. W. Werner. (Record p 39).

Q 6. Did the Box of this enameling machine have any central partition—a bar to fit the rabbet?

A. It did not. (Record p 39).

Q 11. Please state whether or not Mr. Werner ever offered to sell you any other enameling machine?

A. He did. (Record p 40).

Q 13. If you have ever seen this other enameling machine of Mr. Werner's, please state when and where?

A. I think I saw it at T. C. Ladd & Co.'s; I think it was in 1875. (Record p 40).

Q 14. How often did you see it?

A. Twice. (Record p 40).

Q 15. When you saw it at T. C. Ladd & Co.'s as you think, was it rigged for practical work?

A. Yes, it seemed so anyhow. (Record p 40).

Q 17. In what respect if any did the second machine differ from the one you purchased from Werner?

A. In one the moulding was fed by a chain; in the other by a rubber pulley. (Record p 40).

Q 18. In what respect if you recollect did the Boxes of the two machines differ?

A. That I could not state. (Record p 40).

Q. 19. Have you any reason to suppose that the two Boxes were alike?

A. No, I have no reason. (Record p 40).

X Q 22. Do you know a Marcher Box when you see it?

A. I think I do. (Record p 41).

X Q 23. Was not the Box sold to you, which you say was sold to you by Mr. Werner, a simple Marcher Box?

A. I think it was. (Record p 41).

X Q 26. Was that the kind of Box sold to you by Mr. Werner?

(Drawing shown witness).

A. No, it is not. (Record p 41).

X Q 27. Was the Box you saw at T. C. Ladd & Co.'s like the drawing now shown you?

A. It seems to me similar. (Record p 41).

This evidence drawn from hostile witnesses, is all affirmative of prior use.

There is testimony introduced by Complainant of an incompetent negative character, which appears intended to inferentially rebut that of Mr. Werner; but it does not touch the time of prior use proved, from 1866 to 1870, and does not contradict Werner on a single point.

Alfred D. Fox was examined during the illness of Respondent's counsel, and in the absence of Respondents, and was never offered for cross-exnmination.

In his *exparte* statement, he says he became a creditor of T. C. Ladd & Co., and undertook to conduct their business, after that firm had failed. He also undertakes to explain what kind of moulding was made, although a part of the time he was in Canada.

It also appears that he paid for the construction of a new machine of Werner's invention, "that was a new idea," like which "there never had been any made." In respect to the new machine he confirms Mr. Werner, and as to the "form of the moulding" this appears from the testimony of several others to have been a preconcerted idea. The value of this testimony is for the judgment of this Court

It is not altogether clear what George M. Ball was examined for.

Robert Warren was examined and *was* cross-examined.

His slips of memory are worthy of comment. He is not clear about anything but the "form of moulding," and the reason he *is* clear about that is *not* obscure.

In his examination he says:

R E Q 73. With reference to your recollection of the different styles of moulding made on the two machines, did you see every working day while you were at T. C. Ladd & Co.' factory the mouldings produced?

A. Yes. (Record p 32).

R E Q 74. And you were there for about six months?

A. Yes, about that. (Record p 32).

Q 4. Please state if you recollect, whether in this machine the enameling Box had a central partition?

A. My recollection is not clear about it; I think it had not. (Record p 27).

Q 5. Why do you think it had not?

A. From the nature of the moulding turned out—the shape of it? (Record p 27).

Q 6. If you can will you please make a sketch of a sectional view of the moulding enameled on this machine?

A. I will. (Record p 27).

X Q 20. Do you know anything about the art of enameling mouldings?

A. Only what I learned there, I was there about six months in the years 1874 and 1875, I think. (Record p 28).

X Q 22. Will you be good enough to make the old enameling Box as near as you can, upon that piece of paper?

A. I cannot make it, but as near as I recollect it was a square Box; there was no bottom in it, because the moulding fitted the bottom, and the whiting was on it; a knife that smoothed the moulding was at the end. (Record p 28).

X Q 23. Did the moulding fill the entire bottom of the Box?

A. I could not say positively. (Record p 28).

X Q 28. Will you be good enough to make a draft, as near as you can, of the new machine you mentioned in your examination-in-chief?

A. I could not do it; I could only refer to the work turned out, as I have sketched. (Record p 28).

X Q 30. How many kinds of moulding could have been enameled in the new machine you have referred to?

A. I do not know. (Record p 29).

X Q 31. How many kinds of mouldings could have been enameled in the old machine you have described?

A. I do not know. (Record p 29).

X Q 37. Did Mr. Wallick call your attention to these two figures when he requested you to testify?

A. In a general way—I don't recollect anything in particular. (Record p 29).

X Q 38. Did Mr. Wallick draw the two figures, which you have attempted to draw, at that time or at any interview subsequent?

A. I don't recollect. (Record p 29).

X Q 44. Were the figures drawn on wood, paper or what material?

A. I do not know. (Record p 30).

X Q 45. Was that at the first or second interview?

A. At the first probably. (Record p. 30).

X Q 46. Could you have recalled these figures, the shape of these mouldings, without the aid of Mr. Wallick's drawings?

A. I think so, on account of the difference between them. (Record p 30).

X Q 39. When did you first see Mr. Wallick?

A. Last spring. (Record p 29).

X Q 40. How many times have you seen him since last spring?

A. I don't recollect whether it was once or twice. (Record p 29).

X Q 41. Are you prepared to swear that while you can recollect the shape of two mouldings which you saw made six or seven years ago, you are not able to remember whether Mr. Wallick drew those two mouldings for your information, or for any other purpose in your presence, within the last six months?

A. What occurred six or seven years ago made more impression than what occurred recently. (Record p 29).

X Q 42. I desire a direct answer to that question?

A. There was something of the kind done; but my recollection is indistinct. (Record p 29).

The testimony of Thomas C. Ladd substantiates Mr. Werner. See (Record p 33).

Edward J. Dickinson says he was interested with T. C. Ladd in the moulding business, and he is another witness who recollects the "form of the moulding produced, only."

This man says he was at school until he was sixteen years of age, then he went into the drug business at 3 Park Row, New York, and continued there two years. He then spent six or eight months in Florida, then went into business

with T. C. Ladd in 1874, continued until 1875, and has since been soliciting advertisements for a grocery journal, six years; and yet he says he is forty-three years of age. (See Record p p 34, 37).

Seventeen years he don't account for—under oath; yet he was there, and must have known.

Upon the subject of his life and occupations he would be the best evidence, and could throw the most light. If his testimony upon a subject on which he is most competent, has such a dark hole in it, of what value is his talk on a subject upon which he is confessedly ignorant.

This prepares us for his answers to the pregnant and leading questions of the Counsel for the Complainant.

Q 9. Do you know whether in that machine there was a slotted partition or bar to fit the rabbeted strips, to prevent the whiting from flowing into the rabbet?

A. Do you want me to say yes, or no, or what? (Record p 35).

Counsel says: "State what you know of your own knowledge, and if you can't say positively yes or no, tell us what you do know about it?"

A. Witness continues: "That gives a false impression of the whole thing, for this reason, I don't know whether you want a *detailed statement about the machine* or an answer yes, or no." (Record p 35).

Q 10. If you know of your own knowledge whether or not there was such a bar or partition in that machine, please tell us; if you only know from the work produced, or for any other reason just tell us?

A. *I know from the work produced, only.* (Record p 35).

Charles Tollner states that he purchased from Werner in 1873 a Marcher Box, and that he knows a Marcher Box when he sees it. That he saw the Box at Ladd & Co.'s twice, and that he has no reason to suppose it was like his;

but that he could not state wherein the Boxes differed, although his attention was directed to it at the time by Mr. Werner. Diagram H, (A. R. G.) was shown him, and it "seems to him similar" to the Box he saw at T. C. Ladd & Co.'s. (Record p 41).

Now this witness (engaged in the same business) would certainly have seen at a glance whether there was a material difference between the Ladd machine and his own, and had there not been, would be likely to say so: and yet he undertakes to positively indicate the "form of the moulding," although he is not positive that he ever saw Ladd's Box, but "thinks" he did. (Record p 40).

Mr. Bailey, like Fox, is another witness who lost money by Ladd & Co. in 1874, and is ready to whet his grievance after all these years. (Q. 5, Record p 43).

This witness is somewhat inaccurate, and in one instance upon a very material point. He says Mr. Werner worked for Tollner in 1872. Tollner says it was in 1873, and Werner says it was in 1873. (Record p p 66, 39). Also:

Q 19. Please state whether or not you saw that enameling machine before it was purchased by T. C Ladd & Co.?

A. I did. (Record p 44).

Q 20. When?

A. It was in a cellar in Brooklyn, in Fulton Street. (Record p 44).

Q 21. What if any other machine did you see?

A. There was another machine there to do the same kind of work. (Record p 44).

Q 22. State if you know what became of the other machine?

A. It was sold to Charles Tollner. (Record p 44).

Q 24. In what if any respect did the Boxes of these two machines differ?

A. To the best of my knowledge there was no difference at all. (Record p 45).

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Q 24. In what if any respect did the Boxes of these two machines differ?

A. To the best of my knowledge there was no difference at all. (Record p 45).

Q 25. What was the principle difference between the two machines, if any?

A. It was in the feeding: one had an iron wheel to feed with and the other had a rubber wheel. (Record p 45).

Tollner says:

Q 4. What if any enameling machine did you have when you first went into the business?

A. We had what they call a chain machine: call it a chain feed machine. (Record p 39).

Q 17. In what respect if any did the second machine differ from the one you purchased from Werner?

A. In one the moulding was fed by a chain; in the other, by a rubber pulley. (Record p 40).

The weakness of the above testimony has been thus collated to show what slush was offered as alleged rebuttal, to contradict direct affirmative evidence of prior use. It will be observed that even this matter confirms the testimony of Werner on many points, while it never contradicts.

Yet the Complainant discovered and could have obtained direct, instead of negative testimony, by the examination of T. M. Brush, of Brooklyn, the partner of Werner during the time he used the Complainant's alleged improvement—from 1866 to 1870. See Werner's testimony answer to X Q 36, (Record p 68), and answers of Dickinson to X Q 23, (Record p 36), and X Q 53, (Record p 38).

It is thus apparent that the truth is not what he desires to establish.

It was supposed by Respondents that the positive and circumstantial evidence of Werner was sufficient, without increasing their expense by calling Brush in chief; and he could not be called to contradict the subsequent testimony of Complainant, because it all relates to what occurred years after his connection with Werner had ceased, and Respondents could not re-open their case in chief. Suppose Complainant had succeeded in all he attempted, and proved beyond dispute that

Ladd had not used the bar, Werner did not testify that the bar was used by Ladd & Co., but by himself from 1866 to 1870. His testimony is, that in 1871 he conceived and reduced to working drawings his improved Box—the alleged infringement, "Complainant's Exhibit C." Naturally from that time his interest in the 1866 device ceased and centred in the new, which was finally built from those same drawings in 1875. (Record p 61, Q 17 and 18). Even the alleged infringement anticipates Wallick.

Is it not suggestive, that the rebutting witnesses relied on by Complainant, while manifestly ignorant and uncertain on all other points, should positively recollect the same matter (the forms of two mouldings) for a period of six years? This is not in accord with human experience. Moreover the bar can only be used in the manufacture of mouldings having a rabbet cut in the top surface. The evidence shows only two forms in use. As the indefinite variety of other mouldings manufactured are in a different form, when but one machine was used as at Ladd's the bar would necessarily be removed a part of the time; therefore that machine would frequently present the appearance of a Box without the bar, or the common Marcher Box.

The record shows further that the bar is not a satisfactory improvement, for it has been abandoned by every body who has used it—by Werner in 1874 after nine years experience, by Campbell in New York, who constructed, used and sold it in 1874, (Record p 76), by Wilkeson's in Philadelphia, by Cantrell & Petty, who purchased it from Wallick, Johnson & Co.'s trustee for creditors, and virtually by the Complainant; for he purchased an old machine from Werner for $300, and is using it, (Record pp. 52, 58), the device that has been given to the public, and the use of which this suit is designed to suppress.

"retain the moulding in proper position as it passes through "the hopper." In the light of this description it is not difficult to perceive why Mr. Werner thought his performance the same in principle as the Marcher Patent (Record p 62), and why Hoyer was of opinion that the Werner Improvement was a modification of the Marcher Box (Record p 71).

The last patent above cited was reissued April 3, 1860, No. 490, and is shown in Respondents' Exhibit S (Record, p 86). These patents prove with tolerable conclusiveness, that an enameling-box, with sides and end-plates either cast solid or bolted together, cannot be either claimed as new or embraced in a claim, without a disclaimer; unless in a novel form as part of a combination. Also that end-plates cut the reverse of the transverse form of the moulding, to fit the moulding, were old and a part of the art even before the time of Marcher, and a claim for such end-plates was expressly disclaimed by him. They further show that the bottom of a box either with flanches, flanges, or rebates, was included in his claim, or at least used and described by him, so that such an arrangement is no longer novel and patentable; even had Mr. Wallick embraced such a bottom in his claim. In view of these facts it is safe to conclude that the Complainant's claim should be reduced to the bar, or piece of wood with sheet iron sides fitted between the end plates simply; and that his specification is too broad, and contains more than is necessary to secure and protect his supposed improvement. Under the ruling in American Window Screen Co. v Boughton, 10 Phila. 262, the Complainant's bill must be dismissed. It was decided in the late case of the Lehigh Valley R. R. Co. v Mellon, in error to this Court, "that the scope of Let-"ters Patent should be limited to the improvement, defined "by what is technically known as the claim; and that while "the latter may be illustrated, it cannot be enlarged by other "parts of the specification." It was also said, "that where

"infringement is alleged it must be proved; it cannot be "assumed."

The claim of Mr. Wallick, as shown by the File Wrapper, includes "openings in the end plates in a line with the "slot in the partition," but not as part of a combination. As the location of the end plate was fixed by necessity, the term "in a line with the slot" has no significance; and cannot clothe the end plate with the character of novelty. As there is ample evidence (see the Marcher Patents) to show that the end plate cut to fit the moulding, is not novel and patentable, the claim is reduced to the slotted partition; and under the law as laid down by Judge Woods, ibid, the construction of this Patent cannot extend beyond the partition. This slotted partition upon inspection and examination, will be found to be simply a stick of wood with sheet iron nailed or screwed to the sides, and cut of such a length as to fit between the end plates of the Marcher Box. The claim for "an enameling "box divided into two compartments, &c.," would seem to bring it within the objection stated in the case of American Window Screen Co. *v* Boughton, 10 Phila, 252, where it is said, "A patentee cannot under cover of securing his own "invention expand his claim so as to embrace the invention "of another." In analogy to that case this claim embraces the Marcher Box, as its foundation, and in point of fact, the Marcher Box was appropriated bodily, and is produced here in evidence, as Respondent's Exhibit, No. 1, (see Record p. 47,) with Complainant's bar rigged in, and admitted to be such by the Complainant himself in his cross-examination (see Record p. 54). In the language of the last cited case, "the use of the latter is indispensible to its efficiency, and is "the essential basis of it."

Therefore the claim is too large, and the Fourth Assignment should be sustained.

JOHN WALKER SHORTLIDGE,
Solicitor for Appellants.

117-689

No. 201 October Term, 1885

In the

SUPREME COURT OF THE UNITED STATES

Edward J. Cantrell and Henry B. Petty

vs.

Washington Wallick

Appeal from the Circuit Court of the United States
for the Eastern District of Pennsylvania

Brief of Argument for Appellee

CHARLES HOWSON
Counsel

Supreme Court of the United States.

CANTRELL & PETTY, *Appellants*,

vs.

WALLICK, *Appellee.*

APPEAL FROM CIRCUIT COURT OF THE UNITED STATES, EASTERN DISTRICT OF PENNSYLVANIA.

Brief of Argument for Appellee.

Appellee's bill (Record, p. 1) alleges the grant to him of letters patent of the United States, No. 163,825, dated May 25, 1875; and that defendants have infringed said patent by the use of "apparatus for enameling "mouldings" substantially the same in construction and operation as in said letters patent mentioned."

The grant, number, and date of the patent are admitted by the answer (Record, page 4), and copy of the specification and drawing forming part of the patent appear at page 45 of the Record.

The "mouldings" referred to are the strips of wood of varying shapes used for picture frames, house carpentering and for analogous purposes, and by the phrase "enameling" is meant the application, to the exposed surfaces of these strips, of a composition of glue and whiting, to form a base for "gilding" or other ornamentation.

Appellee's Patent.

The claim reads:

"An enameling-box divided into two compartments by a slotted partition, and having openings at the ends in a line with the slot in the partition, all substantially as and for the purpose set forth."

The meaning of the claim and the construction, operation and results of the "enameling-box" claimed, are at once apparent upon inspection of the drawing, and reference to the following paragraphs of the specification:

A permanent longitudinal bar, d, *extends from the plate* A *to the plate* A′, *and to each side of this bar is secured a plate* e, *of metal, the distance across the bar and its two plates being equal to the width of the groove* x *of the strip, Fig.* 5, *against the edges of which groove the said plates bear.*

In each of the plates A and A′ there is an opening, conforming in shape and dimensions to that of the strip, Fig. 5, *and these openings bear such relations to the turned-up edges of the plates* b b′, *and to the bar* d, *that the strip when introduced into the box, will be in the position shown in Fig.* 9, SO THAT NO PARTS OF THE STRIP, EXCEPTING THE ROUNDED EDGES, ARE EXPOSED TO THE ENAMELING COMPOSITION. After thus passing the end of the strip of moulding through the openings in the plates A A′, the composition may be introduced into the reservoirs B B′, for all avenues for the escape of the fluids are cut off by the strip itself.

Feed-rollers X X (shown in dotted lines) may be used for forcing strip after strip through the enameling box, *the said rollers in no way interfering with the different coatings of enamel, because they are never in contact with the enameled surfaces.*

In other words, the enameling-box is separated into two reservoirs, partly by a permanent partition and partly by the strip which is passed through the box, so that the edges only of the strip are exposed to the enameling composition, one edge to the composition in one compartment, and the other edge to that in the other compartment.

EXHIBIT A.

W. WALLICK.

Apparatus for Enamelling Moldings.

No. 163,825. Patented May 25, 1875.

FIG. 8.

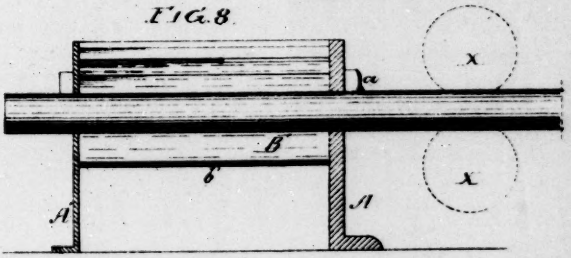


FIG. 9.

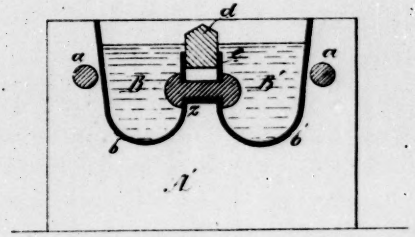


FIG. 1.

FIG. 2.

FIG. 5.

FIG. 7.

FIG. 3.

FIG. 6.

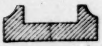


FIG. 4.

Witnesses, Hubert Howson
Thomas M. Ilvain

Washington Wallick
by his Attorneys
Howson & Sons

Prior State of the Art.

The state of the art, prior to appellees' invention, is thus referred to in the patent (pp. 45-46, Record).

"In making the moulding, Fig. 2, for instance, it is usual to take a strip of wood of the form shown in Fig. 7, and pass it several times through what is well known as the Marcher Box, the strip resting on the bottom of the reservoir containing the enameling composition. *After the proper number of coats of enamel have been given to the strip*, the latter is cut away from the under side to the line 1 2, and the strip is then planed away by hand, so as not to disturb the enamel, until nothing remains but two rounded mouldings."

"In making mouldings like Fig. 3, according to the usual practice, a strip of wood of the form shown in Fig. 4 is first made, and *after its upper surface has been enameled* by passing it through the Marcher Box, a longitudinal recess (shown by dotted lines) is cut in the back of the strip, first by a planing-machine and then by a hand-plane, until nothing remains but the two enameled strips like that shown in Fig. 3."

The process of reduction by "planing" mentioned in the last paragraph, is that which is referred to in the testimony in this cause as the "rabbeting" of the mouldings.

The Marcher Box referred to was the subject of patents to one Marcher, and copies of which, put in evidence by appellants, appear at pp. 77–89, Record. The said Marcher Box consisted essentially of a small metal chamber or hopper, for containing the enameling composition, the end plates having apertures for allowing the box to be passed over the moulding, or the moulding to be passed under the box. (See Model Appellants' "EXHIBIT 4").

In describing the operation of enameling by the use of his improved box, as distinguished from this "usual" operation with the "Marcher" Box, appellee says:—

"For enameled mouldings like Figs. 1 and 2, for instance, I prepare a strip of wood, Fig. 5, with a groove *x* above, for receiving the upper feed-roller, and a groove *y*

below, for receiving the lower feed-roller, *and then pass the strip through an enameling box of peculiar construction, so that the rounded edges only are coated*, and when these edges have received the proper number of coats, I sever the strip so as to produce either of the mouldings, Figs. 1 and 2."

"For making mouldings like Fig. 3, I prepare a strip of the form shown by Fig. 6, so that upper and lower feed-rollers may be used to force the strip through the enameling box."

Comparing appellee's box with the "Marcher Box," the distinctive feature of the former, as to construction, is the "slotted partition," serving, with the strip being operated on, to divide the box into two compartments, and the distinctive novel feature in operation is that "the edges *only* of the strip are exposed to the enameling composition—one edge to the composition in one compartment, and the other edge to that in the other compartment"—so that feed-rollers may be used for forcing the strips through the box, "without interfering with the different coatings of enamel, because they are never in contact with the enameled surfaces." (See Figs. 5 and 9 of Drawing).

In explanation of this it is to be remembered that several passages of the moulding through the enameling composition are required to give a coating of the requisite thickness.

Another advantage incidental to the use of appellee's invention, is that whereas, in the use of the Marcher Box, the "rabbeting" of mouldings, such as Fig. 3, made from strips like Fig. 4, is effected *after* the upper surface of the strip has been enameled, in the use of appellee's box, the strip is "rabbeted" *before* the enameling (see Figs. 5 and 6), an operation manifestly easier and more convenient,and avoiding the risk of injury to the enameled surface from such operations, as "planing."

This difference in the order of proceedings is important to be borne in mind, when it comes to the consideration of the testimony relative to alleged "prior use."

The Defences.

Appear to be in substance, non-infringement, prior use, and that appellee's patent is invalid because its claim is broader than the invention.

As to this last defence, appellant insists that all of appellee's "box," except the central "bar," or partition, is old —contained in the Marcher Box—and that because the claim calls for an enameling box provided not only with this bar or partition, but having also other characteristics, *i. e.*, "openings at the ends," not in themselves new with the patentee, therefore the claim is bad, as including that which is old.

It would be waste of time to reply at length to such an argument as this, which seems to be based upon the extraordinary assumption that each particular element mentioned in a claim, is by such mention impliedly asserted to be in itself new. If appellant be right in assuming that all of appellee's box is old, *except* the central "slotted" bar, the claim is, nevertheless, perfectly good; it distinctly calls for an enameling box having said slotted bar, and in connection therewith, not simply "openings at the ends" which of course the "Marcher" box had, but such openings "*in a line with the slot in the partition*," which feature, of course, the "Marcher" Box had not, because it had not the "partition." (*Werner*, ×7, 8, 37, pp. 65, 68, Record; *Hoyer*, Int. 10, p. 69, Record). To use the language of the Court below in its opinion: "The suggested objection to the claim is unfounded; the claim embraces nothing that should not have been included; it covers simply the peculiar enameling box invented and constructed by the plaintiff and shown by the model."

The Question of Infringement.

Model "Complainants' EXHIBIT B" is admitted by appellants to be a substantially correct representation of the machine or device described in the patent.

Model "Complainants' EXHIBIT C" appellants admit to be a substantially correct representation of an apparatus for enameling mouldings used by them in the city of Philadelphia, Pennsylvania, between December, 1878, and the bringing of the Bill of Complaint in this cause.

Record, page 9.

The cuts on the opposite page are copies of these models, and comparison of the models or of the cuts, or of model "Exhibit C" or the cut thereof, with the terms of appellee's patent can leave no doubt upon the question of infringement. It admits of no dispute that "Exhibit C" is an "enameling box divided into two compartments by a slotted partition, and having openings in the ends in a line with the slot in the partition."

As is said by the Court below: "The mechanical appliances are virtually undistinguishable, and the mode of operation and the result, identical. Without the expert testimony (which is very positive), this conclusion is fully sustained by examination of the two boxes and their work."

The expert testimony here referred to is that of Mr. *John L. Kite*, pages 9 to 21, Record, who testifies (*Int.* 4, p. 10, Record):—

Please examine model, "Complainant's Exhibit C," and state wherein you consider an enameling box constructed in substantial accord with that model to resemble or differ from the thing described and shown in complainant's patent.

A. I see no substantial difference, and it appears to be constructed for the purpose of performing the same work as the complainant's device, and to do it in a precisely similar manner.

Exhibit B.
Complainants Patent

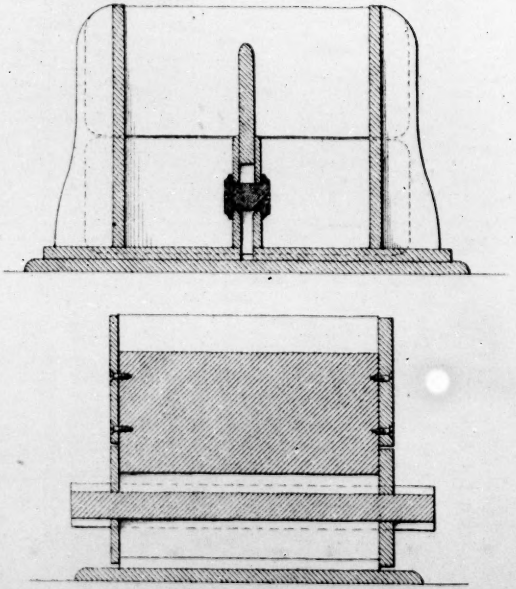
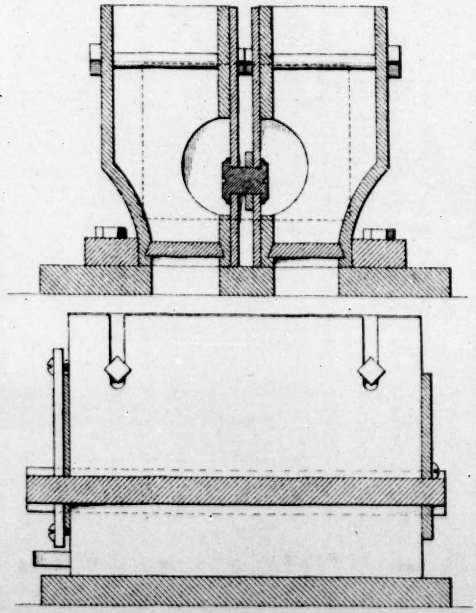


Exhibit C.
Respondents Box



× 70, p. 18, Record:—

"It appears to be an apparatus composed of substantially similar parts arranged for performing the same operations in the same manner, the only difference being in the method of constructing the box part of the apparatus, which, in 'Exhibit B,' is divided into two compartments by a partition and plates, while in 'Exhibit C' the box is divided into two parts by plates which are adjustable, so as in effect to increase or lessen the width or thickness of the slot in the partition; and the difference in the methods of varying the size of the slot makes no difference in the practical working of the apparatus, for it is evident that the movable and adjustable parts of the sides of 'Exhibit C' have no other function than the plates upon the sides of partition in 'Exhibit B.'"

The grounds of Mr. Kite's opinion, and his understanding of the subject of the patent also appear fully from his answers to × 31, 32, 33 (p. 13), 47, 49 to 65 (pp. 15 to 17), 79, 81 (p. 19, Record).

Appellants devote considerable space and energy to adverse criticism of this witness, but to that no reply is deemed necessary, because the opinions expressed by Mr. Kite on this question of infringement are simply those which comparison of appellants' box, Complainant's "Exhibit C," with the description and drawing of appellee's patent, must force upon any person with eyes to see and sense to understand.

Appellants' contention seems to be that they do not infringe, because the central "slotted partition" of their box is not identical in construction with that described and shown in appellee's patent,—does not consist "simply of a stick of wood with sheet-iron nailed or screwed to the sides," but of a couple of internal plates adjustable with reference to each other, and because their box, unlike that of the patent, is made adjustable, so that it may be used either as a box divided into two compartments, complainants' "Exhibit C," or as a single "Marcher" Box—see respondent's "Exhibit L." This latter is a model which, to use the language of Appellants' Brief in the Court below, represents the "alleged" infringement "*converted*" into the "Marcher Box."

These differences may or may not make appellants' box an improvement on that of appellee; however this may be, it is immaterial; that appellants' box, *when* adjusted into the condition of respondent's "Exhibit L," ceases, for the time, to be the box of appellee's patent, and becomes practically a "Marcher" Box, does not change nor break the force of the fact that when it is in the condition of complainant's "Exhibit C," it is in substance and effect the box of appellee's patent.

If appellants' argument be that appellee's claim is to be construed as limited to the precise construction of central bar or partition shown and described, the answer is that neither the terms of the claim nor the evidence as to the prior state of the art calls for any such limited construction. So far as appears, and unless the proof as to alleged prior use is considered sufficient, appellee was the first to devise and construct an enameling box divided by a slotted partition of *any* construction, into two compartments, and having apertures in the end plates, in a line with the slot in that partition. If this be so, appellee is entitled to a liberal application of the doctrine of equivalents in the construction of his claim.

The case is not that of the combination of elements all individually old, but that of a combination introducing a new element, and therewith, a new mode of operation in the art.

Appellants devote considerable argument, or rather, assertion without proof, to establish the proposition that the internal plates of appellants' box, which, together, constitute the "slotted partition," are, in a number of respects, superior to the "slotted bar or partition" of appellee's patent. Be this as it may, it is utterly immaterial. It may be conceded, without in any way affecting the question in hand, that appellants' box has capacities which that of appellee's patent has not, and that the mode of constructing the slotted partition of appellants' box is attended with some advantages which do not attend the particular construction of slotted partition described and shown in appellee's patent. The

fact still remains that respondent's box, so long as it is used in the condition illustrated by complainants' "Exhibit C," is precisely that which is called for by the terms of appellee's claim; that it is an enameling box divided into two compartments by a "slotted partition," and having "openings at the ends in line with the slot in the partition," and that the operation of the box containing these features is precisely that set forth in appellee's patent, the differences, if any, being simply of degree, and not of kind.

Prior Use.

Before taking their testimony on this subject, appellants made appellee their own witness (pp. 48 to 59, Record) to show the date and history of his invention, and his testimony stands uncontradicted and unimpeached.

He conceived his invention in the year 1872 (Ints. 9, 10); his object then being to carry out an idea of *rabbeting* mouldings *before* they were prepared (enameled) (× 1); he commenced in that year, sometime between July and the following January late in the fall a series of experiments, of which the first, made at or about that time, was with a movable box, in which *he placed a bar to prevent the whiting from flowing into the rabbet.* This did not meet with success, because of the box moving, and in the spring of 1873 he made a further experiment with a stationary box, embodying his invention, and with this box worked several lots of mouldings, but having only one pair of feed-rollers, found the power insufficient, and that the mouldings "stuck in the box." He then built a machine having six feed-rollers, in the spring of 1874, and this working satisfactorily, he used it in his business for six or eight months before applying for his patent, *October* 16, 1874 (× 1, p. 54, *Record*).

He regarded his improvement as completed in the spring —February or March—1874 (Ints. 18, 19), applying rubber feed-rollers before he considered it perfect (Int. 20).

It appears then that complainant conceived his invention and embodied it in physical shape, though crude and experimental, in the fall of 1872, and that in February or March, 1874, he had the apparatus perfected and completed to his satisfaction and in all its details, and in practical use in his establishment.

Quite a number of alleged prior uses are set up in the amended answer (p. 8, Record). But respondents introduced no proof as to any, save those by one James W. Campbell, and one Frederick W. Werner.

Alleged Prior Use by Campbell.

The proof as to this is the affidavit of Campbell himself and that of one Robert F. Cartwright in regard to an apparatus said to be represented by the drawing, "Respondents' Exhibit Z." These affidavits were admitted under complainant's agreement that the affiants, if called by respondents, would testify as set forth in the affidavits (p. 76, Record).

It is not necessary to discuss the drawing, or enter into the question of what it represents; Campbell simply testifies that he invented in 1874 what the drawing shows, had a machine built, which "was put into operation as described, for more than eight months prior to May, 1875." This would make the time in or about September, 1874; which is not quite sustained by Cartwright, who built the machine, and who says it was not finished and delivered to Campbell till October 1st, 1874, This is immaterial, however, since complainant had his invention finally perfected and in practical use in February or March, 1874, and had conceived and given physical expression to the invention more than a year before that.

Alleged Prior Use by one F. W. Werner.

This defense rests upon the unsupported testimony of Werner himself (p. 60, Record), appellants having called no witness to confirm Werner's statements, although it appears

that he had some fifteen operatives in his employ (mostly boys), while he was in the business, and while, as he alleges, his "prior use" of appellee's invention was going on, and although during part of said period he had a partner, one T. H. Brush, who, at the time Werner testified, was living somewhere in Brooklyn. (× 35, 36, p. 68, Record).

In determining the weight to be attached to Werner's unsupported statements, it is material to note that he is practically an interested party, inasmuch as he made and sold to the respondents in this case the machine alleged to infringe appellee's patent,* and inasmuch, also, as he had made and used other like boxes, and appellee had, before Werner testified, deposed that he regarded Werner as an infringer of his patent, and intended to sue him as such. (Int. 15, p. 58, Record.) See also Ints. 16, 19, p. 52, Int. 14, p. 58, Record

It is worth while noting also, in this connection, that although appellants purchased their alleged infringing boxes from this man Werner, and although, as appears from his testimony, appellants' counsel was in communication with him shortly after the commencement of this suit, (× 20, 21, p. 66, Record), defendant's original answer did not allege prior use by Werner, and the amended answer, setting up this defence, was not made until nearly a year after the filing of the original answer.

Werner's testimony (p. 60, Record) is, in substance, that (Int. 9) he got up a box like complainant's "Exhibit B," in 1866; (10) that "Respondents' Exhibit H" (A. R. G.) is a diagram of it; (20) made two similar boxes in 1870; (16) improved upon the box in 1875; (17) had made prior improvements, but not to use them; made the drawings of "Complainant's Exhibit C" (respondent's box) in 1871; and (18) when such a box was constructed in 1875 followed those drawings.

The only part of this testimony material to the defense of prior use, is that relating to the construction in 1866, and subsequent use of a box like "Respondent's Exhibit H" (A. R. G.).

*Werner Ints. 12, 15, p. 61, Record.

Of this 1866 box, Werner says (× 53), that he used it, regularly, pretty much every day, from 1866 up to 1870, when (× 52) it was put on a new frame, with a feeding apparatus; sold it to T. C. Ladd & Company, in the winter of 1873, or the spring of 1874—had not been used from 1871 to 1874 (× 54); does not know what became of the box afterwards, or where it is now. Mr. Ladd told him, somewhere about two years ago, that he had it in storage (× 56). The machines made in 1870 were destroyed in the latter part of 1871, broken up and sold for old iron (× 57, p. 59).

As to Werner's alleged use of the 1866 box, between that year and 1870, it does not appear affirmatively from Werner's deposition that it was an open and public use.

The alleged box itself is not forthcoming, nor is its non-appearance satisfactorily accounted for. The T. C. Ladd, to whom Werner says he sold the box in the winter of 1873 or spring of 1874, was not called as a witness by appellants. Examined as a witness in rebuttal for appellee (p. 32, Record), he testifies (Int. 8, p. 33) that he put the box in storage; does not recollect with whom; and does not know what became of it.

The only physical evidence as to this 1866 box is a drawing, "*pro re nata*," "Respondent's Exhibit, Diagram H. (A. R. G.)," (p. 60, Record), which, Werner tells us, was made by him for the benefit of appellant's attorney about a year before testifying, and sometime therefore after the filing of the Bill of Complaint herein.

This drawing appears to represent in section a box having a central "bar or partition" dividing the box into two compartments, and Werner tells us that it is intended to represent a box substantially like complainant's "Exhibit B" (a model of appellant's box).

Werner further says that the box sold to T. C. Ladd & Co. in 1873 or 1874 was the identical box made in 1866; *that no part had been substituted or changed after* 1866. (× 12, p. 66, Record.)

This being the alleged case, does it appear that the box sold by Werner to T. C. Ladd & Co. in 1873 or 1874, was organized as represented by "Diagram H, (A. R. G.)"?

If not, what weight can be attached to Werner's unsupported statement regarding the character of the box as made, so he claims, in 1866?

Attention has been called to the fact that in the use of appellee's box, the mouldings to be enameled are "*rabbeted*" *before being enameled instead of afterwards, as in the use of the old Marcher Box.* As Appellants' Brief states (p. 29) the "bar" can only be used in the manufacture of mouldings having a "rabbet" cut in the top surface.

Bearing this in mind, the force of appellee's evidence to rebut the statement of Werner can be the better appreciated.

The witnesses called for that purpose are ALFRED D. FOX (p. 22, Record), who was connected with T. C. Ladd & Company, in the way of "advancing money to that firm and taking a mortgage on their machinery," and became acquainted in 1874 with Werner, who was then foreman for T. C. Ladd & Company.

GEORGE M. BALL (p. 24, Record), of Ball & Jewell, machinists, who built two enameling machines in 1875, from drawings brought to them by Mr. Fox.

ROBERT WARREN (p. 26, Record), who went into the establishment of T. C. Ladd & Company in the latter part of 1874 to look after the interests of Mr. Fox there.

THOMAS C. LADD (p. 32, Record), formerly of T. C. Ladd & Company, and Edward J. Dickinson (p. 34, Record), another of the members of that firm.

CHARLES TOLLNER, Jr. (p. 39, Record), who was in the molding business in 1873 and 1874, with Werner as foreman, and who then used an enameling machine bought from Werner.

WILLIAM BAYLEY (p. 43, Record), who worked with T. C. Ladd & Company over a year, starting with them when they first went into business.

All of these witnesses, save Ball, appear to have had knowledge both of the machine bought by T. C. Ladd & Company from Werner, and of the character of the work which it was used to produce.

Without quoting at length from their testimony it suffices to say that while Warren, Dickinson, and Tollner, not being, so far as appears, mechanics, cannot undertake to describe the machine from memory, BAYLEY, who is a mechanic, says positively (Bayley Ints. 7 to 10, pp. 43, 44, Record) that the machine had *not* a "central partition or bar to fit the rabbet or rabbets of mouldings being enameled," and makes a sketch ("*Exhibit Bayley's Sketch*," p. 44, Record), which shows the box as simply a "Marcher" Box.

Furthermore, Mr. Bayley testifies that the mouldings enameled in this box were "rabbeted" *after* being enameled (Int. 11), that no rabbeted mouldings were prepared in that machine: he was in the room all the time, more or less, and never saw any." (Int. 14–23.) Mr. Bayley's testimony as to the character of strips used, and as to the fact that the mouldings were *rabbeted after* being enameled, is substantiated by the testimony of Mr. Fox (Ints. 4, 5, Sketch A., p. 22, Record), Robert Warren (Ints. 5–10, Sketch A., pp. 26, 27, Record), Edward J. Dickinson (Ints. 8–19, pp. 35, 36, Record, and model "*Dickinson's Exhibit* 1").

As before stated, the T. C. Ladd, to whom Werner says he sold this 1866 box, was not called by appellants to confirm the testimony of Werner. He was called by appellee in rebuttal, and testified distinctly and positively in his *direct* examination (Int. 3, page 32, Record) that the said box did *not* have a "central partition." Having thus testified, Mr. Ladd, in his so-called cross-examination testified that the said box *had* a movable bar of iron fitting exactly between the ends, for the purpose of filling the rabbet of a moulding, etc., and that he "recognizes" diagram "H, (A. R. G.)" as a correct drawing of the machine. (× 9–13, page 33, Record.)

Now if the drawing "H (A. R. G.)" shows anything, it shows a box having a central partition, which Ladd, in his direct examination, says the box sold to him by Werner had *not*.

Mr. Ladd further testified (Ints. 15 to 17, p. 34, Record) that his firm in using the machine, used the bar, and continued to do so up to the time of getting (sometime in or after 1874, Int. 5, p. 33) an improved machine, said to have been invented by Werner.

It is impossible to reconcile Ladd's testimony in cross-examination with his own testimony in the direct examination, or with the testimony of Bailey, Fox, Warren, and Dickinson.

It appears from an admission of respondents (p. 34, Record), that the drawing "H (A. R. G.)" had been shown to Mr. Ladd before he took the stand, and this, while it makes less intelligible his statements in direct examination that the box had no central partition, makes more intelligible the alacrity with which he interpreted the drawing, and answered the leading and pregnant questions of respondent's counsel in the so-called cross-examination. It is quite evident that Ladd's conduct and testimony were a surprise to appellee and his counsel, but not to the other side.

So far as appears, Mr. Ladd is not a mechanic, his present occupation being that of an assistant bookkeeper (Int. 1). His alleged "recognition" of a mechanical drawing, therefore, would not be of very great weight under the best of circumstances.

But it is evident that, for reasons quite irrespective of the question of capacity, no weight can be given to Ladd's testimony on either side.

Laying him aside, therefore, we have, to contradict Werner's story as to the character of this 1866 box, the positive testimony of the mechanic Bailey that the box as used in Ladd & Co.'s place had no central partition, and his sketch showing it to have been, in substance, a mere Marcher Box, and his testimony, confirmed by that of Fox, Warren and Dickinson, as to the character of the strips operated on in using the box, and as to the fact that these strips were rabbeted after being enameled, proof conclusive in itself that the box, as used in Ladd's establishment, had *not* a central partition, and was not a double, but a single box.

CHARLES TOLNER, JR. (p. 39, Record), testified in substance, that he was in the moulding business; thinks in 1873 or 1874; that Werner was his foreman when he went into the business; and that he used an enameling machine purchased by him from Werner, that this machine did not have any central partition or bar to fit the rabbet of the moulding; that the mouldings enameled on that machine were rabbeted after being enamelled (Ints. 1 to 7); and makes "Tolner's sketch" (p. 39, Record), to illustrate the box.

Werner had offered to sell witness another enameling machine (Int. 11), which witness did not purchase (Int. 12), subsequently, thinks in 1875, saw an enameling machine at T. C. Ladd & Co's; and was told by Werner that this was the same machine which Werner had previously offered to sell witness (Ints. 31, 32, × 37, p. 42, Record). Witness saw the machine at Ladd's twice (Int. 14); saw strips of moulding in the machine; it was a moulding as represented in the sketch made by witness (Tolner's sketch, p. 38, Record). "*It was not rabbeted*, of course."

In connection with Tollner's testimony note that of BAILEY (Ints. 19 to 24, p. 44, Record), that he saw the enameling machine which Werner sold to Tollner, and also that which he sold to Ladd, before the sale of them; that to the best of his knowledge, there was no difference at all between the boxes of the two machines, the principal difference between the two being simply that one had an iron feed wheel, and the other a rubber feed wheel.

It may be regarded as an admitted fact that the machine sold by Werner to Tollner was simply a "Marcher" machine; it is not pretended that *it* had a "partition or bar" to fill the rabbet of a moulding; and here we find that two men who had seen both machines, that sold to Tollner, and that sold to Ladd, both before and after the sale of them, are unaware of any difference between the two.

Such testimony is negative to be sure; but it has some weight, considered in connection with other testimony; and what weight it has is against Werner.

The testimony most strongly contradictory of Werner, is that given by appellee's witness, ALFRED D. FOX (p. 22, Record).

He tells us that after he became interested in the business of T. C. Ladd & Company a *new* enameling machine was built at the suggestion of Mr. Werner, who claimed to be the inventor (Int. 7), and he thus (Int. 8) narrates the attendant circumstance:—

"*A.* Werner represented to me that by building this new machine we could make mouldings *in a different form and much cheaper, as the labor of rabeting and cleaning was done away with;* and on the strength of this recommendation I had a machine built at Ball & Jewell's machine shop, at Greenpoint, L. I. As near as I can recollect, I was to pay for one machine for him to have for his own use, and the patent was to be assigned to me, and I was to have the exclusive control of it. *He stated that this was a new idea, and that no mouldings were made by this process by any party, and that he was going to get a patent; and it was on the strength of that that I got the machine made.*"

Q. 9. Please explain what the principal feature of improvement was in the new machine over the old one?

A. The rabbeting was done at the same time the moulding was made, so that a double rabbeted strip of moulding to form four mouldings could be passed through the enameling box at one time.

Q. 10. Will you please make a sketch of the moulding which could be enameled on the new machine?

Witness makes a sketch, which is offered in evidence as Wallick's Exhibit, "Fox's Sketch B," July 19, 1881.

[This sketch "B, p. 22 Record," represents a moulding strip substantially like that shown by Fig. 5 of the drawing of Complainant's patent.]

(Witness continues.)

In this sketch *a a* represent the rabbets formed *before* enameling, and *b b* and *d d* represent the enameled faces of the moulding.

Q. 11. Please state whether or not Werner ever said to you anything as to his having made before such a machine as this new machine you had made by Ball & Jewell?

A. *He said there never had been any made.*

Q. 11. What, if anything, impresses this on your recollection?

A. Because that, if anything induced me to pay for the new machine.

Q. 12. Did you have more than one of these new machines made?

A. There were two made, but only one was used while I had anything to do with it.

MR. BALL testifies (p. 24), Record, that the two machines were made in the early part of 1875 by the firm of Ball & Jewell, to the order of Mr. Fox, who said the "idea was *new*, belonged to Mr. Werner, who either had got or intended to get a patent." (Int. 17, p. 26, Record.)

Thus we find Mr. Werner, in the latter part of 1874 or early in 1875, inducing Mr. Fox to have a new enameling machine built, to enamel mouldings in the manner set forth in appellee's patent, and claiming the thing as a new invention of his own: "That no mouldings were made by that process by any party;" that "they could make mouldings in a different form and much cheaper, *as the labor of rabbeting and cleaning was done away with.*" Mr. Fox's testimony on this subject, and his description of the alleged *new* process, and *new* forms of mouldings, and of the alleged resulting advantages, as distinguished from the old mode of operation as followed in Ladd & Co's. establishment are totally incompatible with the supposition that the box previously sold by Werner to T. C. Ladd & Co., was what Werner says it was.

Appellants in their brief of argument object to the testimony of Fox, for the first time, that Fox was examined during the illness of respondent's counsel, and was never offered for cross-examination.

If any answer to this eleventh-hour objection were needed, it would be sufficient to say that the record does not show any such state of facts, but it does show (pages 20, 21, and 22, Record) that Mr. Fox's deposition was taken after five days' notice given to appellants' solicitor, the notice giving the name of Mr. Fox as one of the witnesses to be examined, and that the deposition was taken before a notary, under an agreement that so taken, it should

have the same force and effect as though taken before a special Examiner appointed by order of Court. It furthermore appears that Mr. Fox's deposition was taken July 19, 1881, about ten months before the case was heard in the Court below, so that if Mr. Fox was not cross-examined, it was not for want of time and opportunity.

It appears from the testimony of Mr. Fox and Mr. Warren that one of the *new* machines was put in operation in T. C. Ladd & Co's. place, and Mr. Warren gives a description and illustration of the mode of operation tallying with those of Mr. Fox. (Warren, Ints. 12 to 17, and Sketch B, pp. 27–28, Record.)

It may be noted here that in the appellants' brief of argument, this part of Mr. Warren's testimony is seemingly referred to (pp. 20, 21) as though relating to the box sold by Werner to T. C. Ladd & Co.: an entire misapprehension, as is evident when the questions and answers of Warren's depositions quoted by the appellant, are read in their proper connection. Ints. 12 to 17, p. 27, Record, × 29, 36, 59, etc., show that the *new* machine referred to by the witness was not the one purchased by T. C. Ladd & Co., from Werner, but one of those subsequently built by or for T. C. Ladd & Co., and referred to by Mr. Fox.

If the testimony of Messrs. Fox, Warren, and Bayley is correct, the box sold by Werner to Ladd & Co. had *not*, as used by that firm, any central partition, and the first box having any such thing, or a mode of operation resembling that of the complainant's patent was not made and put into use until the early part of 1875, *after* complainant's patent had been applied for.

The burthen of proof as to alleged prior use, is, of course, upon the appellants, and we understand the rule to be that the burthen is upon the defendant raising this defence, to establish it by proof *beyond reasonable doubt*, before it can avail him.

(*Walker on Patents, Sec.* 76, *and cases there cited.*)

The question here then is whether Werner's unsupported statements as to the character of an old machine, not produced, nor its absence satisfactorily accounted for, can be regarded as establishing the defence in this case beyond a reasonable doubt, in the face of complainant's rebutting proofs, and more especially the testimony of Bailey, Fox, Warren and Dickinson.

It is to be said, of course, that appellee's rebuttal refers entirely to the period after 1873, when the alleged anticipating machine was transferred by Werner to Ladd, and that Werner's testimony as to his *own* use of the machine during part of a period of six or seven years prior to that event, is not directly contradicted. But Werner distinctly testifies that when he transferred the machine to Ladd, it was in precisely the same condition as when originally built and used by himself.

It is most singular, if it be assumed that Werner's own alleged use of the machine was an open business use, continued for several years, that not a single witness should be forthcoming to confirm his story as to the character and operation of the machine.

In this connection may be noted especially, the failure of appellants to call Brush, Werner's partner during the time, or part of the time he is alleged to have been using this old machine.

Singularly enough, appellants in their argument note the failure of *appellee* to call Mr. Brush, and say that from this failure "it is apparent that the truth is not what appellee desired to establish." But why did not *appellants*, upon whom rested the burthen of proof, call Mr. Brush; didn't they want the truth? To this question, appellants' counsel, testifying for his clients, answers that

"It was supposed by appellants that the positive and circumstantial evidence of Werner was sufficient without *increasing expense* by calling Brush in chief, and that Brush could not be called to contradict the subsequent testimony for complainants, because that testimony relates to what occurred after Brush's connection with Werner had ceased."

The ingenious gentleman who thus testifies for his clients has evidently forgotten that in his brief filed in the Court below, he testified on the same subject for them as follows:

"In connection with Mr. Dickinson's testimony, it is deemed proper to state that the T. H. Brush mentioned in his cross-examination was the partner of Mr. Werner from 1866 to 1870. *This gentleman upon being asked by both parties to this cause as to his recollection of the facts stated by* Mr. Werner, replied that he had given his attention to outside matters during that connection, *and could not say what kind of a machine was used.*"

This little bit of testimony, though not agreeing with counsel's present deposition, has, over it, the merit of accounting for the non-production of Mr. Brush by either party, on grounds rational, and not uncharitable.

It may be fairly assumed that if Mr. Brush had been able to confirm Werner's story, he would have been called by appellants, upon whom rested the burthen of proof. That he was not able to confirm the story, and therefore was not called, is a necessary conclusion which certainly does not help appellants' case.

If during the time that Werner & Brush were in partnership, the former had made and carried into practice any such invention as he now claims, it is exceedingly singular, to say the least, that Mr. Brush should have no knowledge or recollection upon the subject, not even it should seem of *an* improvement or invention having been made.

It is just as singular, if the machine as sold to Ladd had the bar to fill the rabbet of the moulding, and was used, as Ladd in his so-called cross-examination testifies, in that condition, and for a period of time, during which, as appears, Werner was Ladd's foreman, that appellants should not have been able to produce a single witness from Ladd's establishment to confirm the story, and that, on the other hand, all the witnesses connected with Ladd's establishment and produced by appellee, should, if Ladd be excepted, and not excepting him in his *direct* testimony, give evidence contradictory of, and utterly incompatible with the story.

We submit, moreover, that the declarations of Werner to Fox in regard to the new machines in the spring of 1875, should alone be decisive against Werner's present claims as to the character of the old machine sold to Ladd & Co.

It is to be borne in mind that Mr. Fox was interested in T. C. Ladd & Co's business, and that he had a knowledge of the machinery there used and the work done. If, therefore, the machine sold by Werner to Ladd had been what Werner now says it was, in character and operation, it is simply impossible that Werner should have made to Fox in 1875, the representations which Fox says he did make.

Werner was not called to contradict or explain Fox's testimony, and uncontradicted and unexplained, it is, we submit, fatal to Werner and to appellants' case.

The fact that not a single trustworthy witness has been produced to confirm Werner's story, and that the testimony for appellee tending so strongly to rebut and discredit that story has not been itself rebutted nor explained, suffices, we submit, to dispose of this controversy.

We submit that the Court below was clearly right in holding "that the allegation of prior use is not sustained: that a careful examination of the testimony shows its weight to be against the defendants while the burthen of proof is on them."

It does not seem necessary to allude at any length to the remaining defences. There is some criticism in the testimony, of the patentee's statement in his specification that feed-rollers could not be used with the Marcher Box without danger of disturbing the enamel. Respondent's foreman, one Hoyer, and Werner express the contrary opinion. The relevancy of this testimony is not clear, as respondents have not denied the "utility" of complainant's invention. But one thing *is* quite clear; if, as Hoyer and Werner testify, feed-rollers can *with care* be used with the Marcher Box without disturbing the coats of enamel, the like result is more surely attained, *without care* in the use of complainant's box, as shown and described in his patent, be-

cause, to use the language of his specification, the feed-rollers "are never in contact with the enameled surface."

But the patentee is entitled to the exclusive benefit of his invention, for whatever purpose it is useful or beneficial, whether that declared in his patent or some other; and that the invention has utility and advantages is sufficiently proved by respondents' infringement and their opposition to Complainant's claims.

It is respectfully submitted that the decree of the Court below should be affirmed.

CHARLES HOWSON,

March, 1886. *For Complainant & Appellee*